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DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C. 20370

IN REPLY REFER TO
JAGINST 5800.7B
JAG:133
1 July 1978

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JAG INSTRUCTION 5800.7B

From: Judge Advocate General
To: All Ships and Stations

Subj: Manual of the Judge Advocate General

Ref: (a) 5 U.S.C. § 301 (Authority to issue Departmental Regulations)
(b) 10 U.S.C. §§ 801-940 (Uniform Code of Military Justice)
(c) Manual for Courts-Martial, United States, 1969 (Revised edition)

Encl: (1) Summary of Changes and Editorial Corrections included in this Revision

1. Purpose. To promulgate the Manual of the Judge Advocate General.

2. Cancellation. JAG Instruction 5800.7A of 1 October 1970 is hereby cancelled.

3. Scope. This Manual contains regulations for the Department of the Navy that are authorized by references (a), (b), (c), and other statutes and regulations. The principal changes and corrections to the previous Manual of the Judge Advocate General are enumerated in enclosure (1).

4. Action. This Manual is effective as of the date of this instruction.

5. Distribution. Administrative requests by Navy commands for additional copies of the Manual of the Judge Advocate General should be directed to the Navy Department, Office of the Judge Advocate General (Code 72), Washington, DC 20370. Marine Corps activities will receive copies of the Manual of the Judge Advocate General in accordance with allowances established under Distribution Code "FE" of their Individual Activity T/A for Directives and Publications. Individual copies can be purchased directly from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

William O. Miller

WILLIAM O. MILLER

Approved: 28 SEP 1977

W. Graham Claytor

W. Graham Claytor, Jr.
Secretary of the Navy

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MANUAL OF THE JUDGE ADVOCATE GENERAL

RECORD OF CHANGES

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PREFATORY NOTES

a. The Manual of the Judge Advocate General may be cited as, "JAGMAN 0101a(1)" or "JAGMAN A-1-b-(1)"

b. Forms, certain reference material, and technical guides are located in the Appendix, which is keyed by section number to the relevant chapter.

c. The words "Navy" and "naval," as used in this Manual, include the Marine Corps except where the context indicates differently.

d. The Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 1969 (Revised edition), are referred to as "UCMJ" and "MCM" respectively in this Manual.

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PART A—NONJUDICIAL PUNISHMENT

0101 GENERAL PROVISIONS

a. *Authority to impose.*

(1) *Multiservice commander.* In addition to the categories of officers authorized to impose nonjudicial punishment under Article 15(b), UCMJ, the commander of a multiservice command to whose staff or command members of the naval service are assigned may designate one or more naval units and shall for each such naval unit designate a commissioned officer of the naval service as commanding officer for the administration of discipline under Article 15, UCMJ. A copy of any such designation by the commander of a multiservice command shall be furnished to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to the Judge Advocate General.

(2) *General authority.* Pursuant to the authority of Article 15, UCMJ, and to the provisions of chapter XXVI, MCM, and except as provided in section 0101b, nonjudicial punishment may be imposed in the naval service for minor offenses as follows:

(a) *Upon officers and warrant officers.* Any commanding officer, including a commanding officer as designated pursuant to section 0101a(1) above, may impose upon officers of his command admonition or reprimand and restriction to certain specified limits, with or without suspension from duty, for not more than 15 consecutive days. Officers of the grade of major or lieutenant commander, or above, who are authorized to impose nonjudicial punishment, may in addition to admonition or reprimand, impose restriction for not more than 30 consecutive days. Only an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command may impose the additional punishments authorized by Article 15(b)(1)(B), UCMJ. *See* also section 0101a(4).

(b) *Upon other personnel.* Any commanding officer, including a commanding officer as designated pursuant to section 0101a(1) above, may impose upon enlisted men of his command, and any commissioned officer who is designated as officer in charge of a unit by Departmental Orders, Tables of Organization, manpower authorizations, orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached), or orders of the Senior Officer Present, may impose upon enlisted men assigned to his unit, admonition or reprimand and one or more of the punishments authorized by Article 15(b) (2) (A) through (G), UCMJ. Only commanding officers of the grade of major or lieutenant commander or above may impose the increased punishments authorized by Article 15(b) (2) (H), UCMJ.

(3) *Jurisdiction over individual.*

(a) *General rule.* At the time nonjudicial punishment is imposed, the accused must be a member of the command of the commanding officer, or of the unit of the officer in charge, who imposes the punishment. A person is "of the command" or "of the unit" if he is assigned or attached thereto, and a person may be "of the command" or "of the unit" of more than one command or unit at the same time, such as persons assigned or attached to commands or units for the purpose of performing temporary additional duty.

(b) *Issuance of letter of censure to party before fact-finding body.* A person who has been designated a party before a fact-finding body convened under these regulations (see chapter III) remains thereafter "of the command" of the unit or organization to which he was assigned or attached at the time of such designation for the purpose of imposition of the sole nonjudicial punishment of a letter of admonition or reprimand, even though for other purposes he may have been assigned or attached to another command before such letter was delivered to him. This status terminates automatically when all action contemplated by Article 15, UCMJ, including action on appeal, has been completed respecting the letter of admonition or reprimand.

(c) *Action when accused no longer with command.* Except as provided in subsection (b) above, if at the time nonjudicial punishment is to be imposed the accused is no longer assigned or attached to the unit, the alleged offense should be referred for appropriate action to a competent authority in the chain of command over the individual concerned. In the case of an officer, the referral normally should be to the officer who exercises general court-martial jurisdiction over him.

(d) *Nonjudicial punishment of reservists on active duty for training or inactive duty training.* If all aspects of the procedures specified by Article 15, UCMJ, and paragraph 133b, MCM, which require the presence of the accused are conducted prior to the termination of the drill or training period during which the act for which punishment is imposed occurs, the imposition of punishment may occur subsequent to the termination of such drill or training period at a time at which the reservist is not subject to the UCMJ. See paragraph 11d, MCM.

Even though no proceedings are conducted during the drill or training period during which the act for which punishment is imposed occurs, nonjudicial punishment may be imposed if all aspects of the procedures described by Article 15, UCMJ, and paragraph 133b, MCM, which require the presence of the accused are conducted on a subsequent period, or subsequent periods, of active duty for training or inactive duty training, unless there has been an intervening discharge or some equivalent change of status.

As a matter of policy, any physical restraint pending nonjudicial punishment, or imposed as nonjudicial punishment, shall not extend beyond the normal time of termination of a drill or training period.

(4) *Delegation to a "principal assistant" under Article 15(a), UCMJ.* With the express prior approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, a flag or general officer in command may delegate all or a portion of his powers under Article 15, UCMJ to a senior officer on his staff who is eligible to succeed to command in case of absence of such officer in command. To the extent of the authority thus delegated, the officer to whom such powers are delegated shall have the same authority as the officer who delegated the powers.

(5) *Withholding of Article 15, UCMJ punitive authority.* Unless specifically authorized by the Secretary of the Navy, commanding officers of the Navy and Marine Corps shall not limit or withhold the exercise by subordinate commanders of any disciplinary authority they might otherwise have under Article 15, UCMJ.

(6) *Jurisdiction over offense.* The U.S. Supreme Court decision of *O'Callahan v Parker,* 295 U.S. 258 (1969), concerning "off-base" offenses, and subsequent United States Court of Military Appeals decisions interpreting *O'Callahan,* are inapplicable to nonjudicial punishment hearings. (Note: The Federal District Court in Hawaii has held to the contrary.)

b. *Limitations on imposition of nonjudicial punishment.*

(1) *Demand for trial.* A person in the Navy or Marine Corps who is attached to or embarked in a vessel does not have the right to demand trial by court-martial in lieu of nonjudicial punishment.

(2) *Cases previously tried in civil courts.* The provisions of section 0107e with respect to trial by summary court-martial of persons whose cases have been previously adjudicated in domestic or foreign criminal courts apply also to the imposition of nonjudicial punishment in such cases.

(3) *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, as a matter of policy while the unit is embarked therein, refrain from exercising his powers to impose nonjudicial punishment, referring all such matters to the commanding officer of the ship for disposition. This general policy is considered a necessary corollary to the latter's overall responsibility for the safety, well being, and efficiency of the ship. Nevertheless, the commanding officer of a ship of the Navy is authorized to determine whether, and under what circumstances, he may desire to permit a commanding officer or officer in charge of a unit attached to that ship, while embarked therein, to routinely exercise nonjudicial punishment authority. In consonance therewith, the commanding officer of a ship of the Navy may, for example, permit a commanding officer or officer in charge of a unit attached to and embarked on the ship to exercise his nonjudicial punishment authority, except for certain types of offenses, or offenses committed by certain categories of personnel, which will routinely be referred to the commanding officer of the ship for disposition.

This policy shall not be applicable to Military Sealift Command vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the officer in command of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the naval service embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the Uniform Code of Military Justice over members of such embarked units only in unusual cases concerning incidents occurring on board his ship.

(4) *Correctional custody.* This punishment shall not be imposed on persons in pay grade E-4 and above unless unsuspended reduction below pay grade E-4 is imposed.

(5) *Confinement on bread and water or diminished rations.* This punishment shall not be imposed on persons in pay grade E-4 and above unless unsuspended reduction below pay grade E-4 is imposed.

(6) *Extra duties.* Subject to the limitations set forth in paragraph 131c(6), MCM, this punishment shall be considered satisfied when the enlisted person shall have performed extra duties during available time in addition to performing his military duties. Normally the immediate commanding officer of the accused will designate the amount and character of the extra duties to be performed. The daily performance of the extra duties, before or after routine duties are completed, constitutes the punishment whether the particular daily assignment requires one, two or more hours, but normally extra duties should not extend to more than two hours per day. Except in cases of members of the Naval and Marine Corps Reserve performing inactive duty for training or active duty for training for a period of less than seven (7) days, extra duty shall not be performed on Sunday although Sunday counts in the computation of the period for which such punishment is imposed. Guard duty shall not be assigned as punishment.

(7) *Reduction in grade.* Under no circumstances may the punishment of reduction in grade be imposed except to the next inferior pay grade.

(8) *Arrest in quarters.* An officer or warrant officer undergoing this punishment shall not be required to perform duties involving the exercise of authority over any person who is otherwise subordinate to him.

(9) *Forfeiture and detention.* The imposition of forfeitures or detention of pay is subject to the provisions of paragraphs 131c(8) and (9), MCM. The provisions of law, however, which required enlisted member in pay grade E-4 (4 years or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired 30 June 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective 30 June 1973. Therefore, the $40.00 previously subtracted when computing the net amount of pay subject to forfeitures or detention for an enlisted person in pay grade E-4 (4 years or less service) or below, shall no longer be deducted.

c. *Nonpunitive measures.*

Commanding officers and officers in charge are authorized and expected to use nonpunitive measures to further the efficiency of their commands or units. These measures are not to be imposed as punishment for any military offense(s). Paragraph 128c, *MCM.* Nonpunitive measures may be administered either orally or in writing. Nonpunitive measures generally fall into three areas: extra military instruction, administrative withholding of privileges, and nonpunitive censure.

(1) *Extra military instruction.* This nonpunitive measure is defined as instruction in a phase of military duty in which an individual is deficient, intended for and directed towards the correction of that deficiency. It is a bona fide training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual's performance of duty. It may be assigned only if genuinely intended to accomplish that result. It is not to be used as a substitute for judicial (court-martial) action or nonjudicial punishment (NJP), and must be logically related to the deficiency in performance for which it was assigned. Extra military instruction (EMI) shall be conducted within the following limitations:

(a) EMI normally will not be conducted for more than two hours per day.

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(b) EMI may be conducted at a reasonable time outside normal working hours.

(c) EMI will not be conducted over a period that is longer than necessary to correct the performance deficiency for which it was assigned.

(d) EMI should not be conducted on the servicemember's Sabbath.

(e) EMI will not be used for the purpose of depriving the servicemember of normal liberty to which the 'member is otherwise entitled. A servicemember who is otherwise entitled thereto may commence normal liberty upon completion of EMI.

(f) Authority to assign EMI, to be performed *during normal working hours,* is not limited to any particular grade or rate, but is an inherent part of that authority over their subordinates which is vested in officers and noncommissioned/petty officers in connection with duties and responsibilities assigned to them. This authority to assign EMI, to be performed *during normal working hours* may be withdrawn by any superior if warranted.

(g) Authority to assign EMI to be performed *after normal working hours* is vested in the commanding officer or officer in charge. Such authority may be delegated, as appropriate, to officers and noncommissioned/petty officers in connection with duties and responsibilities assigned to them, only if authorized by regulations of the Chief of Navy Operations or the Commandant of the Marine Corps, as appropriate.

(2) *Administrative withholding of privileges.* A privilege is a benefit, advantage, or favor provided for the convenience or enjoyment of an individual. Examples of privileges that may be temporarily withheld as nonpunitive measures are: special liberty; exchange of duty; special command programs; access to base or ship libraries, base or ship movies, or enlisted or officers' clubs; base parking; and base special services events. It may also encompass the withholding of special pay, and commissary and exchange privileges, provided such withholding complies with applicable rules and regulations, and is otherwise in accordance with law. In all instances, unless properly delegated, final authority to withhold a privilege, however temporary, must ultimately rest with the level of authority empowered to grant that privilege.

Deprivation of normal liberty as a punishment, except as specifically authorized under the UCMJ, is illegal. Therefore, except as the specific result of punishment imposed under Article 15, UCMJ, or as the result of the sentence of a court-martial, it is illegal for any officer or noncommissioned/petty officer to deny to any subordinate normal liberty, or privileges incident thereto, as *punishment* for any offense. However, lawful deprivation of normal liberty may result from other lawful actions, such as authorized pretrial restraint, or deprivation of normal liberty in a foreign country or in foreign territorial waters, when such action is deemed essential for the protection of the foreign relations of the United States, or as a result of international legal hold restriction. Moreover, it is necessary to the efficiency of the naval service that official functions be performed and that certain work be accomplished in a timely manner. It is, therefore, not a punishment when persons in the naval service are required to remain on board and be physically present outside of normal working hours for work assignments which should have been completed during normal working hours, or for the accomplishment of additional essential work, or for the achievement of the currently required level of operational readiness.

(3) *Nonpunitive censure.* This measure is not punishment, and may be administered either orally or in writing. See paragraph 128c, *MCM.* Nonpunitive letters of censure are private in nature and, other than administrative letters of censure issued by the Secretary of the Navy, shall not be forwarded to the Bureau of Naval Personnel or the Commandant of the Marine Corps, quoted in or appended to fitness reports, included as enclosures to *JAG Manual* or other investigative reports, or otherwise included in the official departmental records of the recipient. A sample nonpunitive letter of caution is set forth for guidance in Appendix A-1-a.

d. *Procedures.*

The procedures prescribed in paragraph 133b, MCM and in this subsection shall be followed prior to and during captain's mast or office hours. The requirements of subsections 0102d and e are also applicable if a letter of admonition or reprimand is to be imposed as punishment.

(1) *Advice prior to hearing.* Prior to captain's mast or office hours, the officer contemplating holding the hearing shall ensure that the individual concerned is fully advised of all applicable legal rights and that other required action is taken prior to the hearing. The status of the accused [see subparagraph (a) below] and the potential use of the record [see subparagraphs (b) and (c) below] should be considered in determining whether to utilize Appendix A-1-r, Appendix A-1-s, or Appendix A-1-t.

(a) *Accused attached to or embarked in a vessel.* Appendix A-1-r is an Accused's Acknowledgment of Rights form for use only in circumstances when an accused is attached to or embarked in a vessel. Record can be used in aggravation in the event of a later court-martial conviction for other offenses.

(b) *Accused not attached to or embarked in a vessel. (Record cannot be used in aggravation in event of later court-martial unless lawyer serves as personal representative).* Appendix A-1-s is an Accused's Acknowledgment of Rights form that is for use either: if the officer who will conduct the hearing does not intend any record of captain's mast/office hours to be used in aggravation in the event of a later court-martial conviction for other offenses; or if a personal representative, who is a civilian or military lawyer, appears at the captain's mast/office hours.

(c) *Accused not attached to or embarked in a vessel. (Record may be used in aggravation in event of later court-martial.)* Appendix A-1-t is an Accused's Acknowledgment of Rights form which is for use if it is intended to utilize the record of captain's mast/office hours in aggravation in the event of a later court-martial conviction on other charges. See section 0117. Appendix A-1-t provides for obtaining advice of rights from a lawyer prior to the accused's deciding whether to accept or refuse captain's mast/office hours. Such a lawyer may be a military lawyer or a civilian lawyer (obtained by the accused at his or her own expense). A military lawyer who provides such advice should be "independent." It is considered that a military lawyer, who in the course of his or her regular duties, acts as the principal legal advisor to the officer who would hold the captain's mast/office hours, is not "independent." If the accused does not wish to obtain advice of rights from a lawyer, the accused should so indicate in the appropriate space and complete the remainder of the form. If the accused states that he or she desires to obtain advice of rights from a lawyer before deciding whether to accept or reject captain's mast/office hours, Appendix A-1-t shall so indicate, but the remainder of the form shall not be completed until the accused has been given a reasonable opportunity to obtain this advice of rights. Such advice to an accused from a military lawyer shall be limited to an explanation of the legal ramifications involved in the right to refuse captain's mast/office hours. These legal ramifications are limited to areas such as the accused's substantive and procedural rights at a court-martial as opposed to captain's mast/office hours; the respective punishment limitations thereat; and the potential uses of court-martial convictions and captain's mast/office hours records at any subsequent trial by court-martial. Providing these technical explanations regarding basic principles of military law does not, per se, establish an attorney-client relationship nor does it constitute an assignment of such a military lawyer as the individual's defense counsel or personal representative for purposes of nonjudicial punishment. Military lawyers making such explanations should guard against the establishment of any attorney-client relationship unless detailed by proper authority to serve as defense counsel or personal representative of the accused. Telephone communication between an accused facing captain's mast/office hours and a military lawyer counsel is sufficient to satisfy this advice requirement. In the event that the accused, through no fault of the accused's own, does not receive the requisite advice of rights, and does not waive the right thereto, Appendix A-1-s may be utilized in lieu of Appendix A-1-t.

In the event punishment is imposed at captain's mast or office hours, and Appendix A-1-t is utilized, or the accused is represented by a lawyer at the hearing, appropriate service-record-entries should be made, and signed by appropriate personnel, on page 13 (Navy) or page 11 (Marine Corps) or in such other manner as subsequent service directives may require.

As an example, if the accused executed Appendix A-1-t, the service-record entry may state, after appropriate verification, the following:

> ______________________________ signed
> (grade and name of accused)
> JAG Manual Appendix A-1-t, prior to his/her captain's mast/office hours which was held on ______________________________.
> (date of captain's mast/office hours)

> The accused [talked to a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours)] [gave up his/her right to talk to a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours)]. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of (captain's mast) (office hours).

If the accused is represented by a military or civilian lawyer as a personal representative at his/her (captain's mast) (office hours), the following example of a service-record entry may be made, after appropriate verification:

> ____________________ received punishment
> (grade and name)
> at (captain's mast) (office hours) on ______,
> (date)
> The accused was represented by a lawyer.

(2) *Hearing Requirements:*

An alleged offender in the Navy or the Marine Corps has the right to be accompanied at his Article 15 hearing by a personal representative to advise him and make a statement on his behalf. An accused's right to be accompanied by a personal representative does not create an obligation on the officer contemplating the imposition of nonjudicial punishment to provide such a personal representative to advise and speak on behalf of the accused. It is the responsibility of the accused to obtain and arrange for the presence of such a personal representative if he wishes one. Such a personal representative may, but need not be, a lawyer. The right to be accompanied by a personal representative does not constitute a right to representation in the sense of paragraph 48, *MCM, 1969 (Rev.)*. The granting of this right does not imply that an Article 15 hearing is to become a formal adversary proceeding.

The elemental hearing requirements of paragraph 133b, *MCM*, are expanded to provide that, when there are controverted questions of fact concerning the suspected offense, witnesses, if present on the same ship, camp, station, or otherwise available, shall be called to testify if this can be done at no cost to the Government.

In addition to the specific hearing requirements prescribed in paragraph 133b, *MCM*, all Article 15 hearings shall, when requested by the alleged offender, be open to the public to the extent permitted by available space unless, in the opinion of the officer contemplating the imposition of nonjudicial punishment, military exigencies or security interests dictate otherwise. The officer contemplating the imposition of nonjudicial punishment may remove any person whose behavior has become disruptive to the proper conduct of the proceedings. The presence of representative members of the command as observers during all Article 15 hearings is authorized and encouraged as a method of dispelling erroneous perceptions which may exist concerning the integrity and fairness of the imposition of nonjudicial punishment. Nothing in this requirement shall preclude the alleged offender from exercising his right to confer privately with the officer contemplating the imposition of nonjudicial punishment to relate matters which, in the opinion of the alleged offender, are of a personal nature.

Office hours or captain's mast which results in nonjudicial punishment is not a criminal trial; it is an administrative proceeding. Its purpose is to determine whether an offense was committed and to provide punishment therefor, if appropriate. Such punishment is primarily corrective in nature, designed for minor misconduct in a nonjudicial forum, without the permanent stigma of a record of "federal conviction." As such, the standard of proof by which facts must be established at mast or office hours is by a "preponderance of the evidence," rather than "beyond a reasonable doubt," as it is at a court-martial. The rules of evidence contained in Chapter XXVII, MCM, 1969 (Rev.) do not apply at nonjudicial punishment hearings. Article 31(b) does apply to statements obtained during the hearing. See, paragraph 133b, MCM, 1969 (Rev.)

(3) *Captain's Mast/Office Hours Guide.* Appendix A-1-u is a guide for captain's mast/office hours hearings.

(4) *Nonjudicial Punishment Based on Report of Fact-Finding.*

If nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or other fact-finding body, a preliminary examination shall be made of such record to determine whether the individual concerned was accorded the rights of a party before such fact-finding body and, if so, whether such rights were accorded with respect to the act or omission for which nonjudicial punishment is contemplated. If the individual concerned was accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated, such punishment may be imposed without further proceedings. If the individual concerned was not accorded the rights of a party with respect to the offense for which punishment is contemplated, the impartial hearing prescribed in paragraph 133b, MCM, must be conducted. In the alternative, the record of the fact-finding body may be returned for additional proceedings during which the individual concerned shall be accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated.

(5) *Advice Subsequent to Imposition.*

The officer who imposes punishment under Article 15, UCMJ, shall again ensure that the offender is fully informed of his right to appeal. Appendix A-1-v is an Accused's Acknowledgment of Appeal Rights which should be signed and witnessed if one or more punishments is imposed.

e. *Effective date and execution of punishments.*

(1) *Forfeiture and detention of pay, and reduction in grade.* As provided in paragraph 131e, MCM, these punishments, if unsuspended, take effect on the date imposed. If suspended, and the suspension is later vacated, these punishments take effect for all purposes on the date the suspension is vacated. If, subsequent to the imposition of a punishment of forfeiture or detention of pay and prior to the execution of these punishments, an accused absents himself without authority, such period of absence shall interrupt the service of these punishments and shall be excluded in computing the service of these punishments. However, if a forfeiture or detention of pay is imposed while a prior punishment of forfeiture or detention of pay is still in effect, the prior punishment will be completed before the latter begins to run. A punishment to reduction in rate may be executed in the accused's absence.

(2) *Punishments involving restraint and extra duties.* The punishments of arrest in quarters, correctional custody, confinement on bread and water or diminished rations, extra duties, and restriction, if unsuspended, take effect when imposed upon an accused attached to or embarked in a vessel. When any such nonjudicial punishments are authorized for, and are imposed upon, an accused not attached to or embarked in a vessel, such punishments, if unsuspended, will take effect when imposed; provided however, that if an accused files an appeal of his punishment within a reasonable time from imposition (normally not more than 15 days), the punishment shall be stayed, pending completion of the appeal, if so requested by the accused in his appeal, and if the officer empowered to act on the request determines that there is a reasonable probability that the appeal will be granted in whole or in part. The authority to grant or deny a requested stay rests with the officer acting upon the appeal, but it may be delegated by him to his chief of staff, executive officer, or staff judge advocate. In any case, the decision to grant or deny a requested stay must be made within 72 hours of receipt of the appeal by the officer empowered to act thereon or the stay is automatically granted. If subsequent to the imposition of and prior to the execution of these punishments, an accused absents himself without authority, such period of absence shall interrupt the service of these punishments and shall be excluded in computing the service of these punishments. The execution of any previously imposed nonjudicial punishment involving restraint will normally be interrupted by a subsequent nonjudicial punishment involving restraint. Thereafter, the unexecuted portion of the prior punishment will be executed. The officer imposing the subsequent punishment may, however, order that the prior punishment be completed prior to service of the subsequent punishment. A sentence imposed by a court-martial will also interrupt the service of any nonjudicial punishment involving restraint. When the judicially imposed punishment has been served, the unexecuted nonjudicial punishment will be completed. In addition, commanding officers and officers in charge may, when adequate facilities are not available or when the exigencies of the service require, defer execution of correctional custody, and confinement on bread and water or diminished rations, for a reasonable period of time, not to exceed fifteen days, after imposition. Also, commanding officers and officers in charge may, if the accused is found to be not medically fit for the service of the punishments of correctional custody or confinement on bread and water or diminished rations, defer, for a period not to exceed fifteen days, the execution of the punishment until the accused is determined to be medically fit to serve the punishment.

(3) *Admonition and reprimand.* These punishments take effect when imposed. A letter of censure is considered to be imposed when delivered to the offender.

f. *Appeals.*

(1) *Time.*

(a) In accordance with paragraph 135, MCM, an appeal not made within a reasonable time may be rejected on that basis by the officer to whom the appeal was addressed. In the absence of unusual circumstances, an appeal made more than 15 days after the punishment was imposed may be considered as not having been made within a reasonable time. In computing this appeal period, allowance shall be made for the time required to transmit communications pertaining to the imposition of nonjudicial punishment and the appeal therefrom through the mails. This appeal period commences to run from the date of the imposition of the punishment, even though all or any part of the punishment imposed is suspended.

(b) If unusual circumstances exist which make it impracticable or extremely difficult for the offender to prepare and submit his appeal within the 15-day period, he should immediately advise the officer who imposed the punishment of such circumstances and request an appropriate extension of time within which to submit his appeal. In the absence of such a request, an appeal submitted after the 15-day period will normally be considered as not having been made within a reasonable time. Upon the receipt of such a request, the officer who imposed the punishment shall advise the offender that an extension of time is or is not granted.

(2) *To whom made when officer who imposed the punishment is in a Navy chain of command.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM shall, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the officer who imposed the punishment, be forwarded to the area coordinator or to a subordinate commander authorized to convene general courts-martial designated by the area coordinator for this purpose. When the cognizant area coordinator or the designated subordinate commander is not superior in rank or command to the officer who imposed the punishment or when the punishment is imposed by a commanding officer who is an area coordinator or a designated subordinate commander, the appeal shall be forwarded to the officer authorized to convene general courts-martial and next superior in the chain of command to the officer who imposed the punishment. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the unit at the time of the forwarding of the appeal.

(3) *To whom made when officer who imposed the punishment is in the chain of command of the Commandant of the Marine Corps.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM, shall in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the officer who imposed the punishment, be made to the officer who is the next superior in the chain of command to the officer who imposed the punishment. This shall be the case without regard to whether the appellant is, at the time of his appeal, a member of an organization within that chain of command. In those cases in which the Commandant of the Marine Corps is the next superior in the chain of command and in which the officer who imposed punishment is not a general officer in command, the appeal shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest the officer who imposed the punishment.

(4) *To whom made when commanding officer is a commander of a multiservice command.* An appeal from nonjudicial punishment imposed by an officer of the Marine Corps designated as a commanding officer pursuant to section 0101a(1) shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest and superior in grade to the officer who imposed the punishment. An appeal from nonjudicial punishment imposed by a naval officer designated as a commanding officer pursuant to section 0101a(1) shall be made to the nearest area coordinator or to a subordinate commander authorized to convene general courts-martial designated by the area coordinator for this purpose. However, when such area coordinator or designated subordinate commander is not superior in grade to the officer who imposed the punishment, the appeal shall be to the naval flag officer in command geographically nearest and superior in grade to the officer who imposed the punishment.

(5) *Delegation of authority to act on appeals.* Such authority may be delegated in accordance with the provisions of section 0101a(4).

(6) *Prohibited and inappropriate actions.* An officer who has delegated his nonjudicial punishment powers to a principal assistant under section 0101a(4) may not act on an appeal from punishment imposed by such principal assistant. In such cases and in other cases where it may be inappropriate for the officer designated by section 0101f(2) or (3) to act on the appeal, (as where an identity of persons or staff may exist with the command which imposed the punishment) such fact should be noted in forwarding the appeal.

(7) *Procedures.* When the officer who imposed the punishment is not the offender's immediate commanding officer, the latter may forward the appeal directly to the officer who imposed the punishment for forwarding under sections 0101f(2), (3) or (4). Similarly, the action of the superior on appeal may be forwarded by the officer who imposed the punishment directly to the offender's commanding officer for delivery. Copies of the correspondence should be provided for intermediate authorities in the chain of command.

In any case where nonjudicial punishment is imposed on the basis of information contained in the record of a court of inquiry or fact-finding body, a copy of the record, including the findings, opinions and recommendations, together with copies of endorsements thereon, shall, except where the interests of national security may be adversely affected, be made available to the individual concerned for his examination in connection with the preparation of an appeal. In case of doubt, the matter shall be referred to the Judge Advocate General for advice.

(8) *Contents.* In accordance with the requirements of paragraph 135, *MCM, 1969 (Rev.)*, appeals will be submitted in writing and may include the appellant's reasons for regarding the punishment as unjust or disproportionate. The decision to vacate suspension of nonjudicial punishment, however, is not appealable under the provisions for appeal of nonjudicial punishment. The contents of the forwarding endorsement of the officer who imposed the punishment should normally include:

(a) comment on any assertions of fact contained in the letter of appeal which the officer who imposed the punishment considers to be inaccurate or erroneous.

(b) recitation of any facts concerning the offenses which are not otherwise included in the appeal papers. If such factual information was brought out at the mast or office hours hearing of the case, the endorsement should so state and include any comment in regard thereto made by the appellant at the mast or office hours. Any other adverse factual information set forth in the endorsement, unless it recites matter already set forth in official service record entries, should be referred to appellant for comment, if practicable, and he should be given an opportunity to submit a statement in regard thereto or state that he does not wish to make any statement.

(c) as an enclosure, a copy of the completed mast report form (NAVPERS 1626/7 (Rev. 8-81) or office hours report form (NAVMC 10132PD (Rev. 7-66)).

(d) as enclosures, copies of all documents and signed statements which were considered as evidence at the mast or office hours hearing, or if the nonjudicial punishment was imposed on the basis of the record of a court of inquiry or other fact-finding body in accordance with subsection 0101d(3), a copy of that record, including the findings of fact, opinions and recommendations, together with copies of any endorsements thereon.

(e) as an enclosure, a copy of the appellant's record of performance as set forth on service record page 9 (Navy) or NAVMC 118(3) (Marine).

(9) *Rehearing after appeal.* A superior authority, in acting on an appeal, may set aside a nonjudicial punishment, due to procedural error not amounting to a finding of insufficient evidence to impose nonjudicial punishment. In such event, if the superior authority specifically authorizes such in his action on the appeal, additional proceedings under Article 15, UCMJ, may be conducted by the officer who imposed the original nonjudicial punishment or his successor in command with regard to those offenses for which the appellant received nonjudicial punishment in the original proceeding. Any punishment imposed during such additional proceedings may be no more severe than that awarded during the original proceedings, unless other offenses, which occurred subsequent to the date of the nonjudicial punishment set aside, are included in the offenses charged. An individual, whether or not attached to or embarked in a vessel, has no right to demand trial by court-martial for those offenses for which the rehearing was authorized (unless the appeal was granted on a claim pertaining to the validity of the accused's prior waiver of the right to demand trial by court-martial); but an individual who is not attached to or embarked in a vessel retains the right to demand trial by court-

martial for any added offense which occurred subsequent to the date of the nonjudicial punishment which was set aside.

g. *Records of punishment.* The records of nonjudicial punishment shall be maintained and disposed of in accordance with paragraph 133c, MCM and implementing regulations issued by the Chief of Naval Personnel and the Commandant of the Marine Corps. The forms used for the Unit Punishment Book are NAVPERS 1626/7 (Rev. 8-81) and NAVMC 10132PD (Rev. 7-66).

h. *Definition of "successor in command."* For the purposes of Article 15, UCMJ and this chapter, the term "successor in command" refers to an officer succeeding to the command by being detailed or succeeding thereto as described in U.S. Navy Regulations. The term is not limited to the officer next succeeding. See section 0101j.

i. *Punishment not to be increased.* As provided in paragraph 128d, MCM a punishment once imposed may not be increased. In addition, punishment may not be withdrawn for the purpose of imposing a more severe punishment.

j. *Suspension, mitigation, remission, and vacation of suspension.*

(1) Authority to suspend, mitigate, and remit. The authority of the officer who imposed the punishment, his successor in command, and superior authority to suspend, mitigate, remit and set aside punishments is discussed in paragraphs 134 and 135, MCM. When a person upon whom nonjudicial punishment has been imposed is thereafter, by competent transfer orders, assigned to another command, unit, or activity, the receiving commanding officer (or officer in charge) and his successor in command, may under article 15(d), UCMJ, and the conditions set forth in paragraph 134, MCM, exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment.

(2) *Probationary period.* All suspensions shall be for a definite period of time, but the period of suspension shall not exceed six months. The running of the period of suspension of the punishment is interrupted by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the punishment. The running of the period of suspension of punishment resumes as of the date the probationer's unauthorized absence ends or as of the date of the interruption due to initiation of vacation proceedings if proceedings to vacate suspension of the punishment are concluded without vacation of the punishment. Similarly, the running of the period of suspension resumes as of the date of the interruption due to initiation of vacation proceedings as to any portion of the punishment not vacated as a result of the proceedings.

(3) *Vacation of suspension.* The authority of the officer who imposed the punishment, or his successor in command, to vacate a suspension of nonjudicial punishment is established in paragraph 134, MCM. All actions to vacate the suspension of nonjudicial punishment must be predicated on an act of misconduct occurring within the period of suspension. In any case, the order of vacation of the suspension must be issued within ten working days of the commencement of the vacation proceedings. Hearing requirements applicable to vacation proceedings are set forth in paragraph 134, MCM.

k. *Announcement of disposition of nonjudicial punishment.* Publication of nonjudicial punishment results is rooted in the reasonable belief that it serves to deter other members of the organization from committing similar offenses and that it has salutary effects upon the morale of the organization. Accordingly, commanding officers may, if the interests of the rehabilitation of the offender, good order, high morale, and perceptions of fairness so warrant, establish a policy whereby the disposition of nonjudicial punishment cases should be announced. Announcement may be, for example, by any or all of the following methods:

(1) *Plan of the Day publication.* The name, rate, offense(s), and disposition of the alleged offender may be published in the plan of the day within one month of the imposition of nonjudicial punishment.

(2) *Bulletin boards.* The name, rate, offense(s), and disposition of the individual case may be posted within a month of the imposition of nonjudicial punishment on command bulletin boards.

(3) *Daily formation (Marine Corps) or morning quarters (Navy).* The name, rate, offense(s), and disposition of nonjudicial punishment cases may be announced at daily formations or morning quarters.

0102 LETTERS OF CENSURE

a. *General.* "Censure" is a generic term applicable to adverse reflection upon or criticism of an individual's character, conduct, performance, or military appearance. Censure may be punitive or nonpunitive. Punitive censure is imposed as commanding officer's nonjudicial punishment or as the result of a sentence by court-martial. In increasing order of severity, there are two degrees of punitive censure, namely, "admonition" and "reprimand." Nonpunitive censure is provided for in paragraph 128, MCM, and in section 0101c. When imposed upon officers, punitive admonition or reprimand is required to be by written communication. When imposed upon enlisted personnel as nonjudicial punishment, punitive admonition or reprimand may be by either oral or written communication. Punitive admonitions or reprimands issued to enlisted personnel in execution of court-martial sentences are required to be in writing. Copies of punitive letters of admonition or reprimand, unless withdrawn or set aside, will be filed in the official records of the individuals to whom they are addressed and recorded in departmental records. As provided in section 0101i, once a letter of admonition or reprimand has been imposed, it may not be increased in severity or withdrawn to impose a more severe punishment. The remaining provisions of this section do not apply to oral censures of enlisted personnel or, unless specifically noted, to court-martial sentences involving admonition or reprimand.

b. *Administrative letters of censure by the Secretary of the Navy.* In addition to the censures discussed in section 0102a, the Secretary of the Navy may, by means of a written communication, administratively censure persons in the naval service without reference to Article 15, UCMJ. Unless otherwise directed, a copy of the communication will be filed in the official record of the person censured and recorded in departmental records. The provisions of Article 15, UCMJ, chapter XXVI, MCM, and sections 0101 and 0102 of this Manual (including the right of appeal) are not applicable to administrative censure by the Secretary of the Navy. However, if a copy of the communication is to be filed in the official record of the person punished and recorded in departmental records, the individual may submit an official statement in reply. Any such reply shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Replies shall not contain countercharges.

c. *Internal departmental responsibility.* Correspondence, records, and files in the Department of the Navy that relate to letters of admonition or reprimand are personnel matters under the primary cognizance of the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate.

d. *Procedure.*

(1) *Issuing authority.* Where an officer has committed an offense which warrants a punitive letter of admonition or reprimand, the immediate commanding officer may, at his discretion, but subject to paragraphs 132 and 133, MCM, issue the letter or refer the matter through the chain of command, normally to the superior who exercises general court-martial jurisdiction and who has command over the prospective addressee (see section 0101a(3)). Consideration must be given to the fact that the degree of severity and effect of punitive admonition or reprimand increases proportionately with the degree of superiority of the officer in command who issues the letter.

(2) *Hearing requirement.* Subject to the provisions of Article 15(a), UCMJ, paragraph 132, MCM, and section 0101b regarding demand for trial, a punitive letter may be issued, or its issuance recommended to higher authority, on the basis of an investigation or court of inquiry for acts or omissions for which the individual was accorded the rights of a party or on the basis of mast or office hours prescribed in paragraph 133b, MCM (see section 0101d). When mast or office hours is conducted, the officer conducting the hearing shall prepare a report thereof. The report shall include a summary of the testimony of witnesses, statements and affidavits submitted to the officer holding the hearing, and a description of items of information in the nature of physical or documentary evidence considered at the hearing.

e. *Content of letter.*

(1) *General.* A punitive letter of admonition or reprimand issued pursuant to Article 15, UCMJ may be imposed only for minor offenses (see paragraph 128b, MCM). Such offenses include only those acts or omissions constituting offenses under the punitive articles of the UCMJ. The letter must set forth the facts constituting the offense but need not refer to any specific punitive article of the UCMJ, nor must it satisfy the tests for legal sufficiency required of court-martial specifications. Each letter should contain sufficient specific facts, without regard to the existence of other documents, to apprise a reader of all relevant

facts and circumstances surrounding the offense. General conclusions, such as "gross negligence," "unofficer-like conduct," or "dereliction of duty," are valueless unless accompanied by specific facts upon which they are based. Sample letters of reprimand and admonition are set forth for guidance in Appendix section 1-b and 1-c.

(2) *References.* In all punitive letters of admonition or reprimand, reference should be made to all prior proceedings and correspondence upon which they are based. Reference should also be made to applicable laws and regulations, including the MCM and this section. Particular reference should be made to the hearing afforded the offender. Where applicable, the letter shall include a statement that the recipient has been advised that he has the right to demand trial by court-martial in lieu of nonjudicial punishment and that he has not demanded such trial. See Article 15a, UCMJ.

(3) *Classification (security).* Every reasonable effort will be made to exclude specific details requiring security classification from punitive letters of admonition or reprimand. Unless it contains classified matter, a letter of censure shall be designated "For Official Use Only."

(4) *Notification of right to appeal and right to submit statement.* All punitive letters of admonition or reprimand, except letters issued in execution of a court-martial sentence as described in section 0123d, shall contain the following paragraphs:

"You are hereby advised of your right to appeal this action to the next superior authority, the________________________________ via *[here insert the official designation of the commanding officer issuing the letter or, if he is not the immediate commanding officer of the offender, the official designations of the immediate commanding officer of the offender and the commanding officer issuing the letter]* in accordance with the provisions of Article 15(e) of the Uniform Code of Military Justice, paragraph 135 of the Manual for Courts-Martial, and section 0102f of the Manual of the Judge Advocate General.

"If, upon full consideration, you do not desire to avail yourself of this right to appeal, you are directed to so inform the issuing authority in writing within 15 days after the receipt of this letter."

"If, upon full consideration, you do desire to appeal from the issuance of this letter, you are advised that an appeal must be made within a reasonable time and that, in the absence of unusual circumstances, an appeal made more than 15 days after the receipt of this letter may be considered as not having been made within a reasonable time. If, in your opinion, unusual circumstances exist which make it impracticable or extremely difficult for you to prepare and submit your appeal within the 15-day period, you shall immediately advise the officer issuing this letter of such circumstances and request an appropriate extension of time within which to submit your appeal. Failure to receive a reply to such request will not, however, constitute a grant of such extension of time within which to submit your appeal.

"In all communications concerning an appeal from the issuance of this letter, you are directed to state the date of your receipt of this letter.

"Unless withdrawn, or set aside by higher authority, a copy of this letter will be placed in your official record in [the Bureau of Naval Personnel] [Headquarters, U.S. Marine Corps.] You are therefore privileged, pursuant to U.S. Navy Regulations, to forward within 15 days after receipt of final determination of your appeal or after the date of your notification of your decision not to appeal, whichever may be applicable, such statement concerning this letter as you may desire for inclusion in your record. If you elect not to submit a statement, you shall so state officially in writing within the time above prescribed. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement may not contain countercharges. Your reporting senior is required to make notation of this letter in your fitness report submitted next after the issuance of this letter has become final, either by decision of higher authority upon appeal or by your decision not to appeal." [Omit last sentence in cases involving enlisted personnel.]

f. *Appeals.* The following special rules are applicable to appeals involving punitive letters of admonition or reprimand (in addition to those rules contained in section 0101f):

(1) A copy of the report of mast or office hours shall be provided the individual upon his request except where the interests of national security may be adversely affected. In any event a copy shall be made available to him for his use in preparation of a defense or appeal. See section 0101f for similar rules concerning a copy of the record of an investigation or court of inquiry.

(2) In forwarding an appeal from a punitive letter of admonition or reprimand (see section 0101f(4)), the officer who issued the letter shall attach to the appeal a copy of the punitive letter and the record of investigation or court of inquiry or report of hearing on which the letter is based. The appeal shall be forwarded via the chain of command to the superior to whom the appeal is made. The superior to whom the appeal is made may direct additional inquiry or investigation into matters raised by the appeal if he deems such action necessary in the interests of justice.

(3) Appeals from a letter of admonition or reprimand imposed as nonjudicial punishment shall be forwarded as specified in section 0101f.

(4) Upon determination of the appeal, the superior shall advise the appellant of the action taken via his immediate commanding officer with copies of the action to officers in the chain of command through whom the appeal was forwarded. He shall also return all papers directly to the commander who issued the letter.

g. *Forwarding letter to Department.* Upon adverse determination of any appeal taken, the lapse of a reasonable time after issuance (see section 0101f), or upon receipt of the addressee's statement that he does not desire to appeal, a copy of the punitive letter of censure and such other documents as may be required by the Chief of Naval Personnel or the Commandant of the Marine Corps, together with such statement as the addressee may desire to make or his written declaration that he does not desire to make a statement, shall be forwarded via the chain of command to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. The command to which the addressee of the letter is then attached (if different from the forwarding command) and superior authority who took action on appeal pursuant to section 0101f and 0102f(3), whether or not in the chain of command, shall be included as via addressee(s). If the letter of censure is not sustained on appeal, a copy of the letter shall not be filed in the official record of the member concerned.

It is the responsibility of the command issuing a letter of admonition or reprimand to assemble and forward at one time all the foregoing documents. A copy of the forwarding letter shall be provided for each via addressee.

h. *Cancellation.* Except in certain highly infrequent situations, material properly placed in an officer's or enlisted member's official record is not removed therefrom or destroyed. When a letter of admonition or reprimand has been issued under Article 15, UCMJ and filed in the addressee's official record and it is shown that factual error occurred or that other sound reasons indicate that the punishment resulted in a clear injustice, the officers referred to in section 0101j may cancel or direct cancellation of the letter of admonition or reprimand. The authority (i.e., the office as distinguished from the former incumbent) which issued such a letter of admonition or reprimand may also cancel such a letter. In these cases, cancellation will be accomplished by issuing a second letter to the officer concerned announcing the cancellation of the letter of admonition or reprimand and setting forth in detail the reason prompting such cancellation. Copies of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to other addressees to whom copies of the original letter of censure may have been directed. The copy of the letter of admonition or reprimand and any reference thereto filed in the recipient's official record shall then be removed and destroyed.

If a letter of admonition or reprimand is canceled by superior authority before a copy of the original of such letter has been received by the Chief of Naval Personnel or the Commandant of the Marine Corps, no copy of the letter of admonition or reprimand will be filed in the member's official record. If the cancellation occurs after the copy of the letter of admonition or reprimand has been forwarded to the Department, a copy of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. Upon receipt of the copy of the letter of cancellation, copies of the letter of admonition or reprimand shall not be filed in or, if already filed, shall be removed from the member's official record and destroyed. The order or letter of cancellation or a copy thereof shall not be filed in the member's official records. In other cases, physical removal of letters of admonition or reprimand and other documents in official records will normally be accomplished only by the Secretary of the Navy acting through the Board for Correction of Naval Records. However, if a letter of censure is filed inadvertently by reason of clerical error or mistake of fact, such document may be removed as authorized by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

i. *Public reprimands-private reprimands.* For historical purposes and understanding of the captioned types of censure, brief comment is supplied thereon. Under Article 24 of the Articles for the Government of the Navy (superseded by the Uniform Code of Military Justice), "private reprimand" was one of the punishments specified as being within the authority of a commanding officer to impose upon officers under his command. The word "private" was employed to distinguish a formal letter of reprimand addressed to an individual officer without general publicity from a "public reprimand," i.e., one published verbatim throughout the naval service. Omission of the word "private" preceding "admonition or reprimand" in Article 15, UCMJ does not constitute authority to commanding officers to issue "public reprimands," which are looked upon with disfavor by the Department of the Navy.

PART B–CONVENING COURTS-MARTIAL

0103 DESIGNATION OF ADDITIONAL CONVENING AUTHORITIES

a. *General courts-martial.* In addition to those officers authorized by Article 22(a)(3) through (5) and (7), UCMJ, the following officers are, under the authority granted to the Secretary of the Navy by Article 22(a)(6), UCMJ, designated as empowered to convene general courts-martial:

(1) All flag or general officers, or their immediate temporary successors, in command of units or activities of the Navy or Marine Corps.

(2) The following officers or their successors in command:

Chief of Naval Operations
Vice Chief of Naval Operations
Commandant of the Marine Corps
Commander, Service Group One
Commander, Service Force, Sixth Fleet
Commanders, Functional Wings
Commanders, Fleet Air Commands
Commanders, Naval Bases
Commander, U.S. Naval Activities, Spain
Commander, U.S. Naval Activities, United Kingdom
Commanding Officer, U.S. Naval Support Activity, Naples
Commander, Submarine Squadron Fourteen
Commander, Military Sealift Command, Pacific
Commander, Naval Weapons Station, China Lake
Commander, Naval Education and Training Center, Newport, Rhode Island
Commander, Naval Training Center, Great Lakes, Illinois
Commander, Naval Training Center, San Diego, California
Commander, Naval Training Center, Orlando, Florida
Commanding Officer, Naval Station, Treasure Island, San Francisco, California
Commanding Officer, Naval Air Station, Key West, Florida

(3) The Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, are hereby designated and empowered to exercise limited general court-martial jurisdiction for the purpose of performing the functions described in paragraphs 100c, 102, and 107, MCM. *See* section 0129a(2) concerning the clemency powers of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas.

(4) All frocked flag or general officers in command of units or activities of the Navy or Marine Corps.

b. *Special courts-martial.* In addition to those officers otherwise authorized by Article 23(a)(1) through (6), UCMJ, the following officers are, under the authority granted to the Secretary of the Navy by Article 23(a)(7), UCMJ, empowered to convene special courts-martial:

(1) Commanding officers of all battalions and squadrons, including both regular and reserve Marine Corps commands.

(2) Any commander whose subordinates in the tactical or administrative chain of command have authority to convene special courts-martial.

(3) All commanders and commanding officers of units and activities of the Navy, except inactive duty training Naval Reserve units.

(4) All directors, Marine Corps Districts.

(5) All administrative officers, U.S. Naval Shipyards.

(6) All Inspector-Instructors, Marine Corps Reserve Organizations.

c. *Summary courts-martial.* Those officers who are empowered to convene general and special courts-martial may convene summary courts-martial.

d. *Requests for authority to convene general, special, and summary courts-martial.*

(1) If authority to convene general courts-martial is desired for an officer who is not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 22(a)(6), UCMJ.

(2) If authority to convene special or summary courts-martial is desired for commanding officers other than those listed in subsections (3) and (4) below, and such commanding officers are not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ, or Article 24(a)(4), UCMJ, as appropriate.

(3) If authority to convene special or summary courts-martial is desired for the commanding officer or officer in charge of any command designated as separate or detached under the provisions of U.S. Navy Regulations, the officer designating the organization as separate or detached shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ. The request shall state that the organization has been designated as separate or detached.

(4) If authority to convene special or summary courts-martial is desired for an officer designated as the commanding officer of staff enlisted personnel under the provisions of U.S. Navy Regulations, the designating commander shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ.

(5) Requests for authority to convene summary courts-martial are processed by the Judge Advocate General with other requests for authority to convene special courts-martial. A single letter of authorization, signed by the Secretary, will empower all addressees to convene special courts-martial. Upon receipt of the Secretary's letter, therefore, a superior commander who originally requested only summary court-martial authorization for his subordinate commander shall, pursuant to section 0107(a), issue a letter to that subordinate commander restricting the authority granted to the convening of summary courts-martial. Copies of such letters of restriction shall be forwarded to the Judge Advocate General.

(6) Copies of all Secretarial letters of authorization are maintained in the Military Justice Division, Office of the Judge Advocate General.

0104 PREPARATION OF CONVENING ORDERS

a. *Form.* Convening and amending orders should be in the form set forth in appendix 4, MCM.

b. *Contents.* The text of the order is indicated by the forms in appendix 4, MCM, and notes therein. Each convening order shall be assigned a Court-Martial Convening Order Number. The order shall be personally subscribed by the convening authority and shall show his name, grade, and title, including organization or unit. A copy of the convening order shall be furnished to each person named in such order. A copy of any amending order shall be furnished to each person named in the convening order to which such amending order pertains.

0105 CHANGES IN MEMBERSHIP AFTER COURT HAS BEEN ASSEMBLED

Article 29(a), UCMJ, provides that no member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

0106 CONVENING SPECIAL COURTS-MARTIAL

a. *Bad conduct discharge cases.* As used herein, a bad conduct discharge case is one in which a bad conduct discharge is authorized, i.e., in which either because of the offenses charged or the accused's previous convictions, the maximum punishment authorized includes a bad conduct discharge, *and* in which the convening authority has not included in his endorsement on the charge sheet a direction that the authorized maximum punishment shall not include a bad conduct discharge. In bad conduct discharge cases, the convening authority shall detail to the court a military judge, a defense counsel having the qualifications prescribed under Article 27(b), UCMJ, and a reporter, provided that a military judge need not be so detailed in any case in which a military judge cannot be detailed because of physical conditions or military exigencies. In such cases, detailed written explanation by the convening authority is required to be prepared prior to trial. See paragraph 15b, MCM.

b. *Non-bad conduct discharge cases.* In cases in which neither the offenses charged nor the accused's previous record authorize the imposition of a bad conduct discharge, or in which the convening authority has directed that a bad conduct discharge shall not be an authorized punishment, the convening authority may, but is not required to, detail a military judge, certified defense counsel, and a court reporter to the court. However, in every case the accused must be afforded the opportunity to be represented at trial by counsel having the qualifications prescribed under Article 27(b), UCMJ, unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. In such cases, detailed written explanation by the convening authority is required to be prepared prior to assembly of the court. See paragraph 6c, MCM.

0107 RESTRICTIONS ON EXERCISE OF COURT-MARTIAL JURISDICTION

a. *Special and summary courts-martial.* In accordance with the provisions of paragraph 5b(4) and 5c, MCM, exercise of authority to convene summary and special courts-martial may be restricted by a competent superior commander.

b. *Right to refuse summary court-martial.* All persons in the Navy and Marine Corps have the absolute right to refuse trial by summary court-martial.

c. *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, as a matter of policy while the unit is embarked therein, refrain from exercising any power he might possess to convene and order trial by special or summary court-martial, referring all such matters to the commanding officer of the ship for disposition. The foregoing policy does not apply to Military Sealift Command vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the commanding officer of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the naval service embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the Uniform Code of Military Justice over members of such embarked units only in unusual cases concerning incidents occurring on board his ship.

d. *Jurisdiction under Article 2(4), (5), (6) and Article 3, UCMJ*

(1) *Policy.* In all cases in which jurisdiction is dependent upon the provisions of Article 2(4), (5), (6), and Article 3, UCMJ, the following policies apply:

(a) No case of a retired member of the regular component of the Navy or Marine Corps not on active duty but entitled to receive pay, a retired member of the Naval Reserve or Marine Corps Reserve not on active duty who is receiving hospitalization from an armed force, or a member of the Fleet Reserve or Fleet Marine Corps Reserve not on active duty will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense.

(b) No case in which jurisdiction is based on Article 3, UCMJ will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy.

(c) If authorization is withheld under subsection (a) or (b), the Judge Advocate General shall indicate alternative action or actions, if any, to the convening authority.

(2) *Request for authorization.* Requests for authorization should contain the following information: the nature of the offense or offenses charged; a summary of the evidence in the case; the facts showing amenability of accused to trial by court-martial; whether civil jurisdiction exists; the military status of the accused or suspected person at the present and at the time of the alleged offense; and the reasons which make trial by court-martial advisable. Requests shall be addressed to the Secretary of the Navy and shall be forwarded by air mail or other expeditious means. If considered necessary, authorization may be requested directly by message or telephone.

(3) *Apprehension and restraint.* Specific authorization of the Secretary of the Navy is required prior to apprehension, arrest, or confinement of any person who is amenable to trial by court-martial solely by reasons of the provisions of Article 2(4), (5) or (6) or Article 3, UCMJ.

(4) *Tolling statute of limitations.* The foregoing rules shall not impede the preferring and processing of sworn charges under Article 30, UCMJ when such preferring and processing are necessary to prevent the barring of trial by the statute of limitations. See Article 43, UCMJ and paragraphs 29, 31, 33b and 68c, MCM.

(5) *Recall to active duty.* Members described in subsection (1)(a) above may not be recalled to active duty solely for trial by court-martial.

e. *Cases which have been adjudicated in domestic or foreign criminal courts.*

(1) *Policy.* A person in the naval service who has been tried in a domestic or foreign court, whether convicted or acquitted, or whose case has been "diverted" out of the regular criminal process for a probationary period, or whose case has been adjudicated by juvenile court authorities, shall not be tried by court-martial or be awarded nonjudicial punishment for the same act or acts, except in those unusual cases where trial by court-martial or the imposition of nonjudicial punishment is considered essential in the interests of justice, discipline, and proper administration within the naval service. Such unusual cases shall not be referred to trial or be the subject of nonjudicial punishment proceedings without specific permission as provided below.

(2) *Criteria.* Referral for trial or the imposition of nonjudicial punishment within the terms of this policy shall be limited to cases involving substantial discredit to the naval service and which meet one of the following criteria:

(a) Cases in which punishment by civil authorities consists solely of probation, and local practice does not provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical.

(b) Cases in which civil authorities have, in effect, divested themselves of responsibility by an acquittal manifestly against the evidence, or by the imposition of an exceptionally light sentence on the theory that the individual will be returned to the naval service and thus removed as a problem to the local community.

(c) Cases of homosexuality in which mild penalties have been imposed upon conviction. Homosexuality is a more serious problem in the military society because of the close-contact living and working conditions of its members.

(d) Other cases in which the interests of justice and discipline are considered to require further action under the UCMJ (*e.g.*, where conduct leading to trial before a foreign court has reflected adversely upon the naval service itself or when a particular and unique military interest was not or could not be adequately vindicated in the civilian tribunal).

(3) *Procedure.*

(a) *General and special courts-martial.* No case described in subsection (2) above shall be referred for trial by general court-martial or special court-martial without the prior permission of the Judge Advocate General. Requests for such permission shall be forwarded by the general court-martial authority concerned (or by the special court-martial authority concerned via the general court-martial authority) to the Judge Advocate General via the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate.

(b) *Summary courts-martial and nonjudicial punishment proceedings.* No case described in subsection (2) above shall be referred for trial by summary court-martial or be the subject of nonjudicial punishment proceedings, without the prior permission of the officer exercising general court-martial jurisdiction over the command. Grants of such permission shall be reported by the general court-martial authority concerned by means of a letter addressed to the Judge Advocate General in which he shall describe the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy.

(c) *Reporting requirements.* The provisions of this section do not affect the reporting requirements or other actions required under other regulations in cases of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.

(4) *Limitations.* Personnel who have been tried by courts which derive their authority from the United States, such as U.S. District Courts, shall not be tried by court-martial for the same act or acts. See paragraph 68d, MCM.

f. *Cases involving classified information.*

See OPNAVINST 5510.1 series for procedures relating to trial cases involving classified information. See also subsection g(3) below for matters dealing with national security.

g. *Major Federal offenses.*

(1) *Background.* The Federal civil authorities have concurrent jurisdiction with military authorities over offenses committed by military personnel which violate both the Federal criminal law and the UCMJ. The Attorney General and the Secretary of Defense have agreed on guidelines for determining which authorities shall have jurisdiction to investigate and prosecute major crimes in particular cases. See Appendix A-1-d(1). The administration of this program, on behalf of the naval service, has been assigned to the Naval Investigative Service. Guidelines are set forth in SECNAVINST 5520.3.

(2) *Limitation on court-martial jurisdiction.* In order to ensure that actions under the UCMJ do not preclude appropriate action by civilian Federal authorities in cases likely to be prosecuted in U.S. District Courts, convening authorities shall ensure that appropriate consultation under the Memorandum of Understanding between the Departments of Defense and Justice (see Appendix A-1-d(1)) has taken place prior to issuance of a grant of immunity, approval of a pretrial agreement, or trial by court-martial. Accordingly, commanding officers receiving information indicating that naval personnel have committed a major Federal offense (including any major criminal offense, as defined in SECNAVINST 5520.3, committed on a naval installation) shall refrain from taking action with a view to trial by court-martial, but shall refer the matter to the commanding officer of the cognizant Naval Investigative Service Office, or his nearest representative, for a determination in accordance with SECNAVINST 5520.3. In the event that the investigation of any such case is referred to a Federal civilian investigative agency, any resulting prosecution normally will be conducted by the cognizant U.S. attorney, subject to the exceptions set forth below.

(3) *Cases involving national security.* Consultation with the Department of Justice is required upon the initiation of any investigation involving a violation of a Federal statute relating to the national security. In order to ensure that such consultation is accomplished, every incident which appears to involve espionage, subversion, aiding the enemy, sabotage, spying, or the knowing and willful compromise of classified information must be referred immediately to the Naval Investigative Service in

accordance with SECNAVINST 5520.3. The Naval Investigative Service will notify the Judge Advocate General of the initiation of such an investigation for purposes of consultation with the Department of Justice.

(4) *Exceptions.*

(a) Where it appears that naval personnel have committed several offenses, including both major Federal offenses and serious but purely military offenses, naval authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practicable, and to retain the accused for prosecution. Any such action shall be reported immediately to the Secretary of the Navy (Judge Advocate General) and to the cognizant officer exercising general court-martial jurisdiction.

(b) When, following referral of a case to a civilian Federal investigative agency for investigation, the cognizant United States attorney declines prosecution, the investigation normally will be resumed by the Naval Investigative Service, and the command may then commence court-martial proceedings as soon as the circumstances warrant.

(c) If, while investigation by a Federal civilian investigative agency is pending, existing conditions require immediate prosecution by naval authorities, the officer exercising general court-martial jurisdiction will contact the cognizant U.S. attorney to seek approval for trial by court-martial. If agreement cannot be reached at the local level, the matter shall be referred to the Judge Advocate General for disposition.

(5) *Related matters.* See SECNAVINST 5520.3 for procedures in cases involving civilian employees. See chapter XIII concerning the interviewing of naval personnel by Federal investigative agencies and the delivery of personnel to Federal authorities. See section 0112 regarding grants of immunity in cases involving civilian witnesses or national security.

0108 SUPERIOR COMPETENT AUTHORITY DEFINED

a. *Accuser in a Navy chain of command.* Whenever a commanding officer comes within the purview of Articles 22(b) and 23(b), UCMJ, the "superior competent authority" as used in those articles is, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such accuser, the area coordinator, or the subordinate commander authorized to convene general or special courts-martial, as appropriate, and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the charges. When the cognizant area coordinator or designated subordinate commander is not superior in rank or command to the accuser, or when the accuser is an area coordinator or designated subordinate commander, or if it is otherwise impossible or impracticable to forward the charges as specified above, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction (see paragraph 33i, MCM).

b. *Accuser in the chain of command of the Commandant of the Marine Corps.* Whenever a commanding officer comes within the purview of Articles 22(b) and 23(b), UCMJ, the "superior competent authority" as used in those articles is defined as any superior officer in the chain of command authorized to convene a special or general court-martial, as appropriate. If such an officer is not reasonably available, or if it is otherwise impossible or impracticable to so forward the charges, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction. See paragraph 33i, MCM.

PART C–TRIAL MATTERS

0109 TRIAL GUIDES

a. *General.* A locally prepared or otherwise appropriate trial guide may be used in any court-martial. The trial guide is for assistance only and does not have the mandatory force or effect of regulations.

b. *Special courts-martial with a military judge.* A special court-martial with a military judge, to the extent possible, should follow the same procedures as a general court-martial, including any Article 39(a) session that may be held.

0110 REPORTERS AND INTERPRETERS

a. *Appointment.*

(1) *Reporters.* In each case before a general court-martial or before a military commission, the convening authority shall detail a qualified court reporter or reporters. The detail of qualified court reporters in cases of special courts-martial shall be in accordance with section 0106a and b. If no reporter is detailed and sworn, the special court-martial may not adjudge a bad conduct discharge. (See paragraphs 15b and 33j, MCM, as to when bad conduct discharges may be adjudged by special courts-martial.) Detailed reporters shall record in shorthand or by mechanical or other means the proceedings of, and the testimony taken before, the court or commission. A reporter may be detailed by the convening authority of a summary court-martial, by the officer who orders an investigation under Article 32, UCMJ, or by the officer who directs the taking of a deposition. As directed by the trial counsel of a general or special court-martial or by the summary court, the reporter shall prepare either a verbatim or a summarized record and shall preserve the complete shorthand notes or mechanical record of the proceedings as provided in section 0120. Additional clerical assistants may be detailed when necessary.

(2) *Interpreters.* In each case before a court-martial or military commission, in each investigation conducted under Article 32, UCMJ, and in each instance of the taking of a deposition, the convening authority or the officer directing such proceeding shall appoint, when necessary, an interpreter for the court, commission, investigation, or officer taking the deposition.

(3) *Manner of appointment.* Appointment of reporters and interpreters by the convening authority or authority directing the proceedings may be effected personally by him or, at his discretion, by any other person. Such appointment may be oral or in writing.

b. *Source and expenses.* Whenever possible, reporters, interpreters, and clerical assistants shall be detailed from either naval or civilian personnel serving under the convening authority or officer directing the proceeding, or placed at his disposal by another officer or by other Federal agencies. When necessary, the convening authority or officer directing the proceeding may employ or authorize the employment of a reporter or interpreter, at the prevailing wage scale, for duty with a general or special court-martial, military commission, an investigation under Article 32, UCMJ, or at the taking of a deposition. No expense to the Government shall be incurred by the employment of a reporter, interpreter, or other person to assist in a court-martial, military commission, Article 32 investigation, or the taking of a deposition, except when authorized by the convening authority or officer directing the proceeding. When required reporters or interpreters are not available locally, the convening authority or officer directing the proceeding shall communicate with the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, requesting that such assistance be provided or authorized.

0110A INDIVIDUAL MILITARY COUNSEL: ARTICLE 32 INVESTIGATIONS, GENERAL AND SPECIAL COURTS-MARTIAL

a. *General.* Article 38(b)(3)(B), UCMJ, provides that an accused has the right to be represented before a general or special court-martial or at an investigation under Article 32, UCMJ [hereinafter proceeding], by "military counsel of his own selection if that counsel is reasonably available." Article 38(b)(7) provides that "[t]he Secretary concerned shall, by regulation, define 'reasonably available' for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available." Pursuant to the provisions of Article 38(b)(3) and (7), and in accordance with the provisions of paragraph 48*b* of the *Manual for Courts Martial, 1969 (Rev.)*, the term "reasonably available" is hereafter defined and the procedures for determining whether a military counsel selected by an accused is "reasonably available" are established. Inasmuch as an accused has the right to civilian counsel in addition to detailed counsel or individual military counsel, retention of or representation by civilian counsel does not extinguish the right to representation by individual military counsel. Finally, it is the policy of the Secretary of the Navy that the right to individual military counsel shall be administered so as not to interfere with the orderly and efficient processing of the accused's case.

b. *Definition of "reasonably available."*

(1) An Army, Air Force, or Coast Guard military counsel is "reasonably available" to represent a Navy or Marine Corps accused before a proceeding if that counsel is located within 100 miles of where the proceeding is to be held and not otherwise unavailable within the meaning of paragraph 48*b*, *Manual for Courts-Martial, 1969 (Rev.)*, or regulations of the Secretary concerned for the Department in which that counsel is on duty.

(2) A Navy or Marine Corps military counsel is "reasonably available" to represent an accused before a proceeding if, at the time scheduled for the proceeding, the requested counsel:

(a) Will be on the active-duty list of the Navy or Marine Corps; and

(b) Will be certified in accordance with Article 27(b), UCMJ; and

(c) Will not be one of the following:

(i) a flag or general officer; or

(ii) performing duties as trial or appellate military judge; performing court-martial duties exclusively as a trial counsel; performing duties as appellate defense or government counsel; performing duties as fleet, force, or staff judge advocate, or principal legal advisor to a command, organization or agency, or the principal assistant to such judge advocate or legal advisor; performing duties as a military magistrate; assigned as commanding officer, executive officer, or officer in charge; performing duties as an instructor or student at a college, university, service school or academy; or

(iii) assigned to any of the following commands, activities, organizations, or agencies: Office of the Counsel to the President; Office of the Secretary of Defense; Office of the Secretary of the Navy; Office of the Joint Chiefs of Staff; Office of the Chief of Naval Operations; Headquarters, Marine Corps; National Security Agency; Defense Intelligence Agency; Office of the Judge Advocate General; Office of Legislative Affairs; Office of the Naval Inspector General; Naval Military Personnel Command; or any other agency or department outside of the Department of Defense; and

(d) Will be assigned, if requested by a member of the Army, Air Force, or Coast Guard, to a command or activity located within 100 miles of where the proceeding is to be held (distance determined in accordance with the Official Table of Distances) and not otherwise unavailable within the meaning of these Regulations; or will be assigned, if requested by a member of the Navy or Marine Corps, to a command or activity located within the Navy-Marine Corps Trial Judiciary Circuit within which the proceeding is to be held, or within 100 miles of where the proceeding is to be held (distance determined in accordance with the Official Table of Distances); and

(e) Will be reasonably available, such availability having been determined by the commander of the requested counsel, defined as the commanding officer or head of the organization, activity, or agency with which the requested military counsel will be serving at the time of the proceeding. *See* subsection c(3) below.

(3) Notwithstanding the above, if a requested military counsel meets the requirements of subsections (2)(a) and (2)(b) above and an attorney-client relationship regarding a charge in question existed prior to the request, the requested military counsel should ordinarily be made available to act as individual military counsel. As used herein, an attorney-client relationship exists when counsel and accused have had a conversation which is privileged and counsel had engaged actively in the preparation and pretrial strategy of the case. Specifically excluded are relationships which arose solely because the counsel represented the accused on post-trial review, including review under Article 70.

(4) The Secretary of the Navy may impose geographic limitations in addition to those provided for in subsection b(2)(d) when required by exigent circumstances or military necessity.

c. *Procedure.*

(1) *Request by accused.* An accused may request a determination of the availability of only one individual military counsel at a time. Such request for an individual military counsel shall be in writing, indicating the duties and location of the requested counsel, if known. It shall clearly state whether there is an existing attorney-client relationship between the accused and the requested military counsel regarding a charge in question. It shall indicate whether the requested military counsel possesses unique or special qualifications relevant to the case and specify those qualifications. Such request will be made by the accused or the detailed defense counsel promptly and be submitted through the trial counsel, if any, to the convening authority.

(2) *Action on request by convening authority.*

(a) *When requested military counsel will not be assigned to the convening authority at the time of the proceeding.* If the requested military counsel is a member of the Air Force, Army, or Coast Guard and unavailable within the meaning of paragraph 48*b*, *Manual for Courts-Martial, 1969 (Rev.)*, or a member of the Navy or Marine Corps and unavailable within the meaning of subsections b(2)(a)-(d), and there is no claim of an existing attorney-client relationship regarding a charge in question, the convening authority shall promptly deny the request and so inform the accused, in writing, citing the dispositive subsection(s). In all other cases, the convening authority shall promptly forward the request to the commander of the requested counsel. The convening authority shall provide that authority with the following information: the nature and complexity of the charges and legal issues involved in the case; the estimated duration of the necessary absence (travel, preparation, and participation in the proceeding); the experience level and any special or unique qualifications of detailed defense counsel; and any other information or comments deemed appropriate.

(b) *When requested military counsel will be assigned to the convening authority at time of the proceeding.* If the requested military counsel is unavailable within the meaning of subsections b(2)(a)-(d), and there is no claim of an existing attorney-client relationship regarding a charge in question, the convening authority shall promptly so inform the accused, in writing, citing the dispositive subsection(s). Otherwise, the convening authority shall make the determination of whether the requested military counsel will be reasonably available to act as individual military counsel in accordance with the procedures contained in subsection c (3) below.

(3) *Action on request by commander of requested military counsel.* The commander shall promptly determine whether such counsel will be "reasonably available." In making that determination, the commander will assess the impact upon his/her command should the requested counsel be made available. In so doing, the commander may consider, among others, the following factors: the anticipated duties and workload of the requested military counsel including authorized leave; the estimated duration of the necessary absence (travel, preparation, and participation in the proceeding), considering any unique or special qualifications relevant to the proceeding possessed by the requested military counsel; the ability of other counsel to assume the duties of the requested military counsel; the nature and complexity of the charges or legal issues involved in the proceeding; the experience level and any special or unique qualifications of detailed defense counsel; and the information or comments of the convening authority. The commander shall promptly inform the convening authority and accused of such determination. If a determination of unavailability is made, the reasons therefor shall be set forth in writing and provided to the convening authority and the accused. The decision whether a requested military counsel will be available to act as an individual military counsel is an administrative determination within the sole discretion of the commander of the requested counsel.

(4) *Administrative review of denial of request.* If a requested military counsel is determined to be unavailable, the accused may appeal that decision to the immediate superior in command of the authority who made such determination, via that authority, but appeals may not be made which require action at the departmental or higher level. The basis for such appeal will normally be an abuse of discretion. If, however, the accused claims that the person who made that determination did not have the authority to do so, or did so on the basis of inaccurate or incomplete information, the reviewing authority shall consider those allegations and, if warranted, direct corrective action. The appeal shall be promptly reviewed and the commander of the requested military counsel, convening authority, and accused shall be promptly informed of the decision.

(5) *Approval of associate defense counsel.* If individual military counsel has been made available to defend an accused at a proceeding, the detailed defense counsel normally shall be excused from further participation in the case unless the convening authority, in his/her sole discretion, approves a request from the accused that detailed defense counsel act as associate defense counsel. The seriousness of the alleged offenses, the retention of civilian defense counsel, the complexity of legal or factual issues, and the detailing of additional trial counsel are among the factors which may be considered by the convening authority in the exercise of this discretion. This decision is not subject to administrative review.

0111 OATHS

a. *Military judges.* A military judge, certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform his duties faithfully and impartially in all cases to which he is detailed. This oath may be taken at any time and may be administered by any officer authorized by Article 136, UCMJ and section 2502 to administer oaths. Once such an oath is taken, the military judge need not be resworn at any court-martial to which he is subsequently detailed.

Military judges will customarily be given a one-time oath. In the event that a military judge detailed to a particular court-martial has not been previously sworn, the trial counsel shall administer the oath to the military judge at the appropriate point in the proceedings. The following oath shall be used for the swearing in of military judges:

> I______________________________ do swear (or affirm) that I will faithfully and impartially perform, according to my conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon me as military judge. So help me God.

b. *Counsel.* Any military counsel, certified in accordance with Article 27(b), UCMJ, may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any officer authorized by Article 136, UCMJ, and section 2502 to administer oaths. Once such an oath is taken, counsel need not be resworn at any trial to which he is detailed trial counsel, assistant trial counsel, defense counsel or assistant defense counsel, or in any case in which he is serving as individual counsel at the request of the accused.

Individual counsel, military (not certified) or civilian, requested by the accused must be sworn in each case. Detailed trial and defense counsel who are not certified in accordance with Article 27(b), UCMJ must be sworn in each case. Counsel who have taken one-time oaths administered by forces of the armed services other than the naval services need not again be sworn in courts-martial convened in the naval service.

The following oath may be used in administering a one-time oath to counsel:

> I__________________________________
> do swear (or affirm) that I will faithfully perform the duties of counsel in any court-martial to which I am detailed as counsel or in which I participate as individual defense counsel. So help me God.

c. *Court members.* Court members may be given one oath for all cases which are referred to the court in accordance with the convening order which detailed them as members. In the event the convening order is amended, a new member may be sworn when he arrives. This oath may be administered by any officer authorized by Article 136, UCMJ, and section 2502 to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court members will be those prescribed in paragraph 114b, MCM. See also appendix 8b, MCM.

d. *Reporters.* Any court reporter, military or civilian, may be given a one-time oath. The oath normally will be administered by trial counsel in the first court-martial to which the court reporter is assigned. Once such oath is taken, the court reporter need not be resworn at any trial to which he is assigned. Each command to which court reporters are permanently attached shall maintain a record of the one-time oaths administered to reporters attached to that command. In addition, a notation of the fact that a military court reporter has taken a one-time oath should be placed in the service record of such court reporter for future reference with instructions that such notation be retained in the service record upon re-enlistment. When the court reporter is not sworn at trial, the fact that he has been previously sworn will be recorded in the transcript or record of trial.

The following oath may be used in administering a one-time oath to court reporters:

> I__________________________________
> do swear (or affirm) that I will faithfully perform the duties of reporter in any court-martial to which I am assigned as reporter. So help me God.

e. *Interpreters.* Interpreters will be sworn by the trial counsel as provided in paragraph 114e, MCM.

0112 AUTHORITY TO GRANT IMMUNITY FROM PROSECUTION

a. *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

b. *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, *i.e.*, any officer exercising general court-martial jurisdiction [*see* paragraph 68h, MCM, 1969 (rev.)]. Such recommendation will be forwarded by the trial counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other factfinding body, or the investigator when no charges have been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice. If approved, a copy of the written grant of immunity must be served upon the accused or his defense counsel within a reasonable time before the witness testifies. Additionally, if any witness is expected to testify in response to a promise of leniency, the terms of the promise of leniency must be reduced to writing and served upon the accused or his defense counsel in the same manner as a grant of immunity.

c. *Civilian witnesses.* Pursuant to 18 U.S.C. §§ 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, then the approval of the Attorney General of the United States or his designee must be obtained prior to the execution or issuance of an order to testify to the witness. The cognizant officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in §0112e.

d. *Cases involving national security.* In all cases involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States, a proposed grant of immunity shall be forwarded to the General Counsel of the Department of Defense for the purpose of consultation with the Department of Justice. See § 0107g and Appendix A-1-d(1)-(3) regarding relations between the Departments of Defense and Justice. The cognizant officer exercising general court-martial jurisdiction may obtain approval by the Attorney General of a proposed grant of immunity by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in §0112e.

e. *Content of immunity requests.* In all cases in which approval of the Attorney General of the United States is required prior to the issuance of a grant of immunity, whether under § 0112c or d, the cognizant officer exercising general court-martial jurisdiction shall forward by message or letter the proposed order to testify and grant of immunity to the Judge Advocate General (Code 20). The order to testify should be substantially in the form set forth in Appendix A-1-d(4). Requests for assistance shall be in writing, should allow at least three weeks for consideration, and must contain the following information:

(1) Name, citation, or other identifying information, of the proceeding in which the order is to be used.

(2) Name of the witness for whom the immunity is requested.

(3) Name of the employer or company with which a witness is associated or the military unit or organization to which a witness is assigned.

(4) Date and place of birth, if known, of the witness.

(5) FBI or local police file number, if any, and if known.

(6) Whether any State or Federal charges are pending against the witness and the nature of the charges.

(7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.

(8) A brief resume of the background of the investigation or proceeding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(a) What testimony the witness is expected to give;

(b) How this testimony will serve the public interest;

(c) Whether the witness (i) has invoked the privilege against self incrimination; or (ii) is likely to invoke the privilege;

(d) If (c)(ii) is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

f. *Post-testimony procedure.* After a witness immunized in accordance with § 0112c or d has

testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530:

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.

A copy of this correspondence together with a verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony or other information given by a civilian witness pursuant to such an order to testify (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

g. *Review.* The officer granting immunity to a witness is thereafter precluded from taking reviewing action on the record of the trial before which the witness granted immunity testified. However, a successor in command not participating in the grant of immunity is not so precluded.

h. *Form of grant.* In any case in which a military witness is granted transactional immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in Appendix A-1-d(5). In any case in which a military witness is granted testimonial immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in Appendix A-1-d(6).

0113 ARTICLE 39(a) SESSIONS

a. *Procedure.* Article 39(a) sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. Article 39(a) sessions prior to assembly are encouraged, and every effort should be made to resolve at that time those issues which would otherwise be considered out of the hearing of the members of the court.

At an Article 39(a) session held prior to assembly, the military judge may inquire into the accused's desire to be tried by a military judge alone. If the accused does so desire, the court may be immediately assembled with all further proceedings taking place subsequent to assembly. The military judge should determine at the initial Article 39(a) session whether counsel have been sworn. If not, the appropriate oath should be administered at this time. See section 0111a.

If the accused does not request to be tried by military judge alone, the Article 39(a) session may proceed.

The military judge of a general or special court-martial may, at an Article 39(a) session hold the arraignment, hear arguments and rule upon motions, and receive the pleas of the accused. (See paragraph 53d, MCM.) If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of his plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately and without further formalities. If the accused has pleaded guilty to some but not all of the charges and specifications, the military judge may enter findings of guilty on those charges and specifications to which the accused has pleaded guilty. When a finding of guilty has been so entered, the military judge need only inform the court members after assembly that the accused has been arraigned, a plea of guilty has been entered and accepted, and he has been found guilty.

At an Article 39(a) session either counsel may make challenges for cause or peremptory challenges if he so desires. If questioning of a particular court member is desired, the military judge may, in his discretion, request the court member to appear at the Article 39(a) session. The use of this procedure does not preclude voir dire of the court after assembly, further challenges at that time, or subsequent challenges as provided by paragraph 62d, MCM.

If all matters have not been considered at the initial Article 39(a) session, other Article 39(a) sessions may be held prior to or after assembly of the members. An Article 39(a) session is not authorized to be held by the president of a special court-martial without a military judge.

b. *Entry of findings without a vote.* In special courts-martial without a military judge and in courts-martial with a military judge in which the plea has not been accepted at a previous Article 39(a) session, the president of the court or the military judge, as appropriate, may enter a finding of guilty without vote immediately upon the acceptance of a plea of guilty.

0114 PRETRIAL AGREEMENTS IN GENERAL AND SPECIAL COURTS-MARTIAL

a. *Legality of pretrial agreements.* Under the provisions of the UCMJ, it is legal and proper for the convening authority to make a pretrial agreement as to charges and specifications upon which the accused will be tried and/or the maximum sentence which will be finally approved by the convening authority if the accused pleads guilty and his plea of guilty is accepted by the military judge and is not permited to be withdrawn. Experience has shown that opportunities for advanced planning, savings in money and manpower, and a more expeditious administration of justice can be effected by such agreements.

b. *Major Federal offenses.* The authority of court-martial convening authorities to refer cases to trial and approve pretrial agreements extends only to trials by courts-martial. In order to ensure that such actions do not preclude appropriate action by federal civilian authorities in cases likely to be prosecuted in the U.S. district courts, court-martial convening authorities shall ensure that appropriate consultation under the Memorandum of Understanding between the Departments of Defense and Justice (Appendix A-1-d(1) - (3)) has taken place prior to trial by court-martial or approval of a pretrial agreement, in cases where such consultation is required.

c. *Action by convening authorities.* Convening authorities and their staff judge advocates will take necessary action to insure that the rights of accused persons are fully protected in cases where there is a pretrial agreement. To that end, the following procedures shall apply:

(1) *General courts-martial.*

(a) The offer to plead guilty must originate with the accused and his counsel and should be submitted to the assigned trial counsel who will conduct all arrangements as to the offer and make recommendations with respect thereto to the convening authority through the staff judge advocate. Whether or not the convening authority enters into such a pretrial agreement is a matter within his sound discretion. The agreement, if made, must be in writing and must be personally signed by the convening authority and the accused and witnessed on behalf of the accused by his counsel. A suggested form of such an agreement is set forth in Appendix A-1-e, but this form must be modified as appropriate to include all of the agreement made between the accused and the convening authority. No matters "understood" between the parties should be omitted from the written agreement. The sentence which will ultimately be approved by the convening authority (under various sentences which may be adjudged by the court, if desired) shall be set forth clearly and should, under all of the circumstances of the particular case, be appropriate for the offense or offenses.

(b) The offer of the accused to plead guilty will not be accepted if the Government has reason to believe that the evidence which it will be able to produce at the trial will be insufficient to convict. Unreasonable multiplication of charges which might tend to persuade the accused to enter into a pretrial agreement shall be avoided, nor shall an accused be induced to plead guilty to a lesser included offense by the preferring of more serious charges—as, for example, by preferring a charge of desertion where the evidence indicates that unauthorized absence is the appropriate charge.

(c) Except for the military judge, under no circumstance will the court be officially informed of any negotiation between counsel and the convening authority on the subject of a pretrial agreement, of any such agreement existing at the time of trial, or of any such agreement made and later rejected by the accused to permit a plea of not guilty. Precaution shall also be taken to prevent the court, insofar as possible, from obtaining unofficial knowledge of the foregoing. A pretrial agreement will not preclude the accused from presenting matter in mitigation and extenuation; and counsel for the accused has a continuing duty, despite such an agreement, to vigorously represent the accused before the court with respect to the sentence to be adjudged. The military judge is permitted to examine in toto the pretrial agreement and to inquire into the accused's understanding of such agreement, whether hearing the case alone or with members.

(d) In all cases where there is a pretrial agreement followed by a guilty plea of the accused, the agreement (in a form substantially similar to that set forth in Appendix A-1-e) shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the review of the staff judge advocate prescribed by paragraph 85, MCM.

(2) *Special courts-martial.*

(a) The procedures set forth above relating to pretrial agreements in general courts-martial are applicable to special courts-martial except as provided in subsections (b) and (c) below.

(b) The provisions of subsection (1) (a) above relating to submission of the proposed agreement through the staff judge advocate are not applicable in those cases in which the convening authority has no staff judge advocate. A suggested form of the agreement is set forth in Appendix A-1-f.

(c) In those cases wherein the agreement contemplates a punitive discharge, if counsel for the accused is not a lawyer within the meaning of Article 27(b), UCMJ, additional counsel so qualified shall be made available to the accused, unless specifically waived by the accused. Such additional counsel will advise the accused relative to the pretrial agreement and will also witness the signature of the accused thereon. In all cases where there is a pretrial agreement followed by a guilty plea, the agreement (in a form substantially similar to that set forth in Appendix A-1-f), shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the convening authority's action on the record of trial.

0115 RELEASE OF INFORMATION PERTAINING TO ACCUSED PERSONS; SPECTATORS AT JUDICIAL SESSIONS

a. *Release of information pertaining to accused persons.*

(1) *General.* There are valid reasons for making available to the public information about the administration of military justice. The task of striking a fair balance between the protection of individuals accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the military service and of the workings of military justice, depends largely on the exercise of sound judgement by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused's trial, or which could reasonably have such an effect.

(2) *Applicability of regulations.* These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, the imposition of nonjudicial punishment, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the imposition of nonjudicial punishment, completion of trial (court-martial sessions), or disposition of the case without trial. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other persons or agencies for unofficial purposes.

(3) *Release of information.*

(a) As a general matter, release of information pertaining to accused persons should not be initiated by persons in the naval service. Information of this nature should be released only upon specific request therefor, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

(b) Except in unusual circumstances, information which is subject to release under this regulation should be released by the cognizant public affairs officer; and requests for information received by others from representatives of news media should be referred to such officer for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses.

(4) *Information subject to release.* On inquiry the following information concerning a person accused or suspected of an offense or offenses may generally be released except as provided in subsection (6) below:

(a) The accused's name, grade, age, unit, regular assigned duties, duty station, and sex.

(b) The substance of the offenses of which the individual is accused or suspected.

(c) The identity of the victim of any alleged or suspected offense, except the victim of a sexual offense.

(d) The identity of the apprehending and investigating agency, and the identity of counsel of the accused, if any.

(e) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, pursuit, and use of weapons.

(f) The type and place of custody, if any.

(g) Information which has become a part of the record of proceedings of the court-martial in open session.

(h) The scheduling of any stage in the judicial process.

(i) The denial by the accused of any offense or offenses of which he may be accused or suspected (when release of such information is approved by the counsel of the accused).

(5) *Prohibited information.* The following information concerning a person accused or suspected of an offense or offenses generally may not be released except as provided in subsection (6) below:

(a) Subjective opinions, observations or comments concerning the accused's character, demeanor at any time (except as authorized in subsection

(4)(e), above) or guilt of the offense or offenses involved.

(b) The prior criminal record (including other apprehensions, charges or trials) or the character or reputation of the accused.

(c) The existence or contents of any confession, admission, statement or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(d) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.

(e) The identity, testimony, or credibility of possible witnesses, except as authorized in subsection (4)(c), above.

(f) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(g) References to confidential sources or investigative techniques or procedures.

(h) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under subsection (5) above or the nonrelease of information permitted under subsection (4) above. Attention should be given to the SECNAV instructions implementing the Freedom of Information Act (5720.42 series) and the Privacy Act (5211.5 series). Consultation with the command judge advocate, or if none is assigned, the cognizant naval legal service office, concerning interpretation and application of these instructions is encouraged.

b. *Spectators.*

(1) *At sessions of courts-martial.* The sessions of courts-martial shall be public and, in general, all persons, except those who may be required to give evidence, shall be admitted as spectators. Whenever necessary to prevent the dissemination of classified information to other than authorized persons, the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, as appropriate, may direct that the spectators involved be excluded from a trial or a portion thereof. In all other situations, spectators or classes of spectators may be excluded only when the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, in the exercise of the discretion reposed in him, determines such action to be legally necessary or proper.

(2) *At pretrial hearings.* In any preliminary hearing, including a hearing conducted pursuant to Article 32, UCMJ, or a court of inquiry or investigation conducted pursuant to this Manual, the presiding officer, upon motion of the Government or the defense or upon his own motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators shall be based on the ground that dissemination of evidence, information, or argument presented at the hearing may disclose matters that will be inadmissible in evidence at a subsequent trial by court-martial and is therefore likely to interfere with the right of the accused to a fair trial by an impartial tribunal.

0116 PREPARATION AND FORWARDING OF CHARGES

a. *Preparation generally.* See chapter VI, MCM, for preparation of charges. Available data as to service, witnesses and similar items required to complete the first page of the charge sheet will be included. Ordinarily, the charge sheet will be forwarded in triplicate, and all copies will be signed. If several accused are charged on one charge sheet with the commission of a joint offense, the complete personal data as to each accused will be set forth on page 1 of the charge sheet or upon an attached copy of that page. One additional signed copy of the charge sheet will be prepared for each accused in excess of one.

b. *Enlisted pay grades.* The pay grade of an accused, e.g., E-1, E-2, etc., shall be indicated following the grade or rate of the accused on page 1 of the charge sheet.

c. *Pay and allotment data.*

(1) *Longevity increases.* Under applicable provisions of the Department of Defense Military Pay and Entitlements Manual, certain periods, such as unauthorized absence, do not constitute "time served" for the purpose of determining the cumulative years of service creditable for longevity pay increases. Care shall be taken in recording the basic pay of the accused on page 1 of the charge sheet to ensure that the entry accurately reflects only the longevity increase to which the accused is entitled.

(2) *Contribution to basic allowance for quarters.* The provision of law which required enlisted member in pay grade E-4 (4 years' or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired 30 June 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective 30 June 1973. Therefore, the $40.00 previously subtracted when computing the net amount of pay subject to forfeiture or detention for an enlisted person in pay grade E-4 (4 years' or less service) or below, shall no longer be deducted. Accordingly, that section on page 1 of the charge sheet, DD form 458, titled: "Contribution to family or quarters allowance [MCM, 126h(2)]" should be marked "not applicable."

d. *Forwarding of charges by an officer in a Navy chain of command.*

(1) *General court-martial cases.* When a commanding officer, in taking action on charges, deems trial by general court-martial to be appropriate, but he is not authorized to convene such court or finds the convening of such court impracticable, the charges and necessary allied papers will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such commanding officer, be forwarded to the area coordinator or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the charges. See section 0108 for additional provisions in cases in which the forwarding officer is an accuser.

(2) *Special and summary court-martial cases.* When an officer in command or in charge, in taking action on charges, deems trial by special or summary court-martial to be appropriate, but he is not authorized to convene such courts-martial, the charges and necessary allied papers will be forwarded to the superior in the chain of command authorized to convene the type of court-martial deemed appropriate unless an officer authorized to convene general courts-martial and superior in the chain of command to such officer in command or charge, on the basis of a local arrangement with the area coordinator or the designated subordinate commander, has directed that such cases be forwarded to the area coordinator or to the subordinate commander authorized to convene the type of court-martial deemed appropriate and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designed subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of the forwarding of the charges. See section 0108 for additional provisions in cases in which the forwarding officer is an accuser. Subject to the terms of the local arrangement, forwarding to the area coordinator or designated subordinate commander may also be resorted to even though the immediate or superior commanding officer of the accused is authorized to convene the type of court-martial deemed appropriate but finds such action impracticable.

e. *Forwarding of charges by an officer in the chain of command of the Commandant of the Marine Corps.* When an officer in command or in charge, in taking action on charges, deems trial by general, special, or summary court-martial to be appropriate, but he is not empowered to convene a court as deemed appropriate for the trial of the case, the officer will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such officer, forward the charges and necessary allied papers through the chain of command to an officer exercising the kind of court-martial jurisdiction deemed appropriate. See paragraphs 32f and 33i, MCM. See also section 0108 for additional provisions in cases in which the forwarding officer is an accuser.

0117 PERSONAL DATA AND CHARACTER OF PRIOR SERVICE OF THE ACCUSED.

In accordance with the authority contained in paragraphs 75b(2) and 79, MCM, the trial counsel or summary court-martial officer may, prior to sentencing, obtain and introduce from the personnel records of the accused evidence of the marital status, of the number of dependents, if any, and of the character of prior service of the accused. Such evidence includes copies of reports reflecting the past military efficiency, conduct, performance, and history of the accused and evidence of any disciplinary actions to include punishments under Article 15. Personnel records of the accused include all those records made or maintained in accordance with Departmental regulations that reflect the past military efficiency, conduct, performance, and history of the accused. Records of nonjudicial punishment must relate to offenses committed prior to trial and during the current enlistment or period of service of the accused, provided such records of nonjudicial punishment shall not extend to offenses committed more than two years prior to the commission of any offense of which the accused stands convicted. In computing the two year period, periods of unauthorized absence as shown by the personnel records of the accused should be excluded. *See* paragraph 75b(2), *MCM*, for applicable procedural regulations.

0118 COURT-MARTIAL PUNISHMENT OF REDUCTION IN GRADE

a. *Automatic reduction.* Automatic reduction to the lowest enlisted pay grade under Uniform Code of Military Justice, art. 58a(a), and *MCM, 1969, (Rev.),* par. 126e, shall be effected in the naval service but only in accordance with this section, which is the regulation prescribed by the Secretary of the Navy pursuant to Article 58a(a), Uniform Code of Military Justice.

(1) Reduction to the lowest enlisted pay grade will be automatically effected only in a case in which the sentence, as approved by the convening authority, includes, whether or not suspended, either:

(a) A punitive discharge, or

(b) Confinement in excess of 90 days (if the sentence is awarded in days) or 3 months (if the sentence is awarded in other than days).

(2) In his sole discretion, the convening authority or supervisory authority may retain the accused in the pay grade held at the time of sentence or an intermediate pay grade and suspend the automatic reduction to pay grade E-1 which would otherwise be effected under Article 58a, Uniform Code of Military Justice, and this section, utilizing the forms in Appendix 14d, *Manual for Courts-Martial, 1969 (Rev.),* as guides. The automatic reduction may be suspended without regard to whether any part of the approved sentence was suspended. If, however, the adjudged sentence includes a reduction in pay grade, the reduction in pay grade should be suspended for the same period as the automatic reduction is suspended. Additionally, the convening authority may direct that the accused serve in pay grade E-1 while in confinement but be returned to the pay grade held at the time of sentence or an intermediate pay grade upon release from confinement. Failure of the convening authority to address automatic reduction will result in the automatic reduction to pay grade E-1 on the date of the convening authority's action.

(3) The following forms may be used as guides for (a) suspending automatic reduction without suspending any of the approved sentence (except reduction if included in the sentence) or (b) reducing the accused to E-1 while in confinement and returning the accused to the pay grade held at the time of sentence or an intermediate pay grade upon release from confinement.

(a) In the foregoing case of __________, the sentence is approved [and will be duly executed] but [the execution of so much thereof as provides for reduction to pay grade __________ and] automatic reduction to pay grade E-1 is suspended until __________, at which time, unless the suspension is sooner vacated, the suspended portions will be remitted without further action. The accused will [continue to] serve in pay grade __________ unless the suspension of the [reduction to pay grade _____ and] automatic reduction is vacated, in which event the accused at that time will be reduced to the pay grade of E-1.

(b) In the foregoing case of __________, the sentence is approved [and will be duly executed]. The accused will serve in pay grade E-1 from this date until released from confinement at which time he/she will be returned to pay grade __________.

b. *Form of sentence to reduction in grade.* In adjudging a sentence which includes reduction to the lowest enlisted pay grade or to an intermediate pay grade, that portion of the sentence which relates to reduction should refer exclusively to the numerical designation of the grade to which reduced. Accordingly, this portion of the sentence should read: "To be reduced to the grade of pay grade E-____." The proper grade or rate title, occupational field, or

apprenticeship or striker designation of the reduced pay grade shall be administratively determined by the convening authority, subject to the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate.

0119 FORFEITURES, DETENTIONS, FINES

a. *Deduction of contribution to basic allowance for quarters no longer required.* The provision of law which required an enlisted member in pay grade E-4 (4 years' or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired 30 June 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective 30 June 1973. Therefore, the $40.00 previously subtracted when computing the net amount of pay subject to forfeiture or detention for an enlisted person in pay grades E-4 (4 years' or less service) or below, shall no longer be deducted. With regard to a service member with dependents, however, the effect of any forfeiture or detention of pay on his ability to discharge his responsibility for the care of his dependents is a factor in considering the amount of forfeiture or detention.

b. *Forfeitures imposed by a summary court-martial.* Forfeiture of pay adjudged by summary courts-martial under Article 20, UCMJ, may be apportioned over more than one month, but, as a matter of policy, the period of apportionment should not exceed three months.

c. *Limitations.* In cases in which the sentence involves forfeiture of pay, detention of pay, or fine, the limitations prescribed by paragraph 126h, MCM, shall be observed, as well as the procedures prescribed in the Department of Defense Military Pay and Allowances Entitlements Manual.

0120 PREPARATION OF RECORDS OF TRIAL

a. *Verbatim records of trial.* Records of trial shall be prepared verbatim in certain general and special courts-martial as provided in paragraphs 82b and 83a and appendix 9a, MCM. When a verbatim record of trial is maintained, the trial counsel shall, unless unavoidably impractical, retain or cause to be retained any notes (stenographic or otherwise) or any recordings (mechanical or voice) from which the record of trial was prepared until such time as the convening authority (in general courts-martial) or the officer exercising general court-martial jurisdiction (in special courts-martial) takes action on the case.

b. *Summarized records of trial.* Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 82b and appendix 10a, MCM, in general courts-martial where:

(1) The court has adjudged a sentence not including discharge; and

(2) The sentence is not in excess of that which can otherwise be adjudged by a special court-martial; and

(3) The case does not affect a general or flag officer.

If a guilty plea is entered, the providency inquiry conducted by the military judge must be summarized. The basic facts elicited must be included in this summary and must be set forth with sufficient specificity to show both that the accused is admitting acts or omissions which correspond to the specifications in the charge sheet and that the facts admitted constitute violations of the articles charged.

Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 83b and appendix 10a, MCM, in special courts-martial where the court has adjudged a sentence not including a bad conduct discharge. If a guilty plea is entered, the providency inquiry conducted by the military judge or president of a special court-martial without a military judge must be summarized. The basic facts elicited must be included in this summary and must be set forth with sufficient specificity to show both that the accused is admitting acts or omissions which correspond to the specifications in the charge sheet and that the facts admitted constitute violations of the articles charged.

When summarized records of trial are prepared, the notes or recordings (stenographic, mechanical, voice, or otherwise) from which the record of trial was prepared shall be retained until completion of appellate review.

Additionally, if there is a pretrial agreement, the military judge's inquiry into the understanding of all parties regarding the agreement, as required by *U.S. v. Green*, 24 U.S.C.M.A. 299, 52 C.M.R. 10, 1 M.J. 453 (1976), must be included in the summarization.

c. *Records of trial establishing lawful jurisdiction only.* In all courts-martial that have resulted in an acquittal of all charges and specifications, or that have been terminated prior to findings with prejudice to the Government, the record of trial need contain only sufficient information to establish lawful jurisdiction over the accused and the offenses. When the proceedings were terminated prior to findings with prejudice to the Government, a summary of the reasons for such termination shall be included in the record of trial. When a summarized record of trial is prepared in accordance with this section because the accused has been acquitted of all charges or the proceedings have been terminated prior to findings with prejudice to the Government, the notes of recordings (stenographic, mechanical, voice, or otherwise) from which the record of trial was prepared shall be retained until the completion of supervisory review in special courts-martial, and the convening authority's review in general courts-martial.

d. *Summary courts-martial.* The record of trial in all summary courts-martial shall contain the original, a duplicate original, or a certified true copy of the convening order. In summary courts-martial cases in which a not guilty plea is entered to any charge and specification and in which a finding of guilty results, the evidence considered by the summary court-martial relative to guilt or innocence must be summarized and attached to the record. If a guilty plea is entered, paragraphs 70b and 79d(2), MCM 1969 (Rev.) will be complied with. Matters considered by a summary court-martial in extenuation and mitigation must, in all cases, be summarized and attached to the record. Strict compliance with the provisions of paragraph 79e, MCM, is directed. After the convening authority has taken action on the record, he will cause a complete copy of the record of trial to be served on the accused.

e. *Preparation, arrangement, and authentication; general and special courts-martial.* In the preparation of both verbatim and summarized records of trial, the preparation, arrangement, and authentication of records of trial and allied papers, to the extent possible shall be in accordance with appendices 9 and 10, MCM, and the following rules:

(1) *Charge sheets.* The original of the charge sheet may be inserted into the original record and copies of the charge sheet may be inserted into copies of the record in lieu of copying into the record the charges and specifications upon which the accused is to be tried, the name and description of the accuser, the affidavit, and the reference for trial. However, when the charges and specifications, the name and description of the accuser, his affidavit and the reference for trial have been copied verbatim into the record, as recommended in the guide on page A8-13,

MCM (appendix 8b), the original of the charge sheet is to be prefixed to the original of the record.

(2) *Staff judge advocate's review.* In addition to the requirements of paragraph 85d, MCM, copies of the staff judge advocate's legal review shall be attached to all copies of records of trial forwarded for review by the Navy-Marine Corps Court of Military Review. Additionally, all copies of records of trial which contain a review required by articles 61 or 65(b), UCMJ, shall contain proof of service of that review upon counsel for the accused together with any comment or challenge which counsel may make and such response or correction as may be appropriate.

(3) *Court-Martial Data Sheet.* Unless otherwise directed by the cognizant officer exercising general court-martial jurisdiction, the use of the Court-Martial Data Sheet (DD Form 494) is not required.

(4) *Request for appellate defense counsel and power of attorney.* When the statement of the accused concerning appellate representation before the Navy-Marine Corps Court of Military Review is required (see section 0121), the original shall be affixed to the original record and a copy thereof to each copy of the record. If an accused executes a power of attorney authorizing his appellate defense counsel of record to accept service of the Navy-Marine Corps Court of Military Review decision in his case (see section 0121), the original shall be affixed to the original appellate rights statement in the original record of trial and copies affixed to the copy of the appellate rights statement in each copy of the record.

(5) *Court-Martial Data Form.* Convening and supervisory authorities during the review of all trials by general court-martial and all trials by special court-martial involving bad conduct discharges shall prepare NAVJAG Form 5813/1, Court-Martial Data (Rev. 11-72), attach it under the cover sheet of the original record of trial, and forward it with the record of trial to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General. RCS JAG 5813-4. A form containing sample entries is set forth in Appendix section A-1-g.

(6) *Authentication.* Non-verbatim records of trial by special courts-martial shall be authenticated in the same manner as verbatim records.

(7) *Arrangement of original record with allied papers.* The record of trial should be bound within protective covers and arranged in the sequence shown on the back cover sheet of DD Form 490 or DD Form 491, as applicable.

f. *Security classification of records of trial.*

Records of trial containing classified matter shall be properly classified in accordance with the provisions of paragraph 82d, MCM, and the Department of the Navy Security Manual for Classified Information. Copies of such records for delivery to the accused shall be prepared and handled in accordance with paragraph 82g, MCM. Attention is directed to the fact that, while the Security Manual requires that matter bear the over-all classification of its highest component, that degree of classification is not then imparted to other components. Rather it authorizes and requires that a component be marked with the classification it warrants (if any). Misunderstanding of these provisions may result in erroneously marking as classified each page of a voluminous record, rendering review for downgrading unnecessarily difficult and excision for delivery to the accused or counsel impossible.

PART D–POST-TRIAL MATTERS

0121 POST-TRIAL REPRESENTATION OF A CONVICTED ACCUSED

a. A convicted accused is entitled to post-trial representation by a defense counsel qualified in accordance with Article 27(b), UCMJ, until completion of appellate review in his case. Article 70(c)(1), UCMJ, provides that appellate defense counsel shall represent the accused, when requested by him, before the Navy-Marine Corps Court of Military Review or the U.S. Court of Military Appeals. Paragraph 48k(3), MCM, requires the trial defense counsel, immediately after a trial which results in a conviction, to advise the accused in detail as to his appellate rights. Included in this explanation shall be advice with regard to the accused's right to post-trial representation, to request clemency pursuant to paragraph 77a, MCM, and to request deferment of any sentence to confinement pursuant to Article 57(d), UCMJ. Trial defense counsel shall inform the accused of the responsibilities and powers of the convening authority, and, as applicable, the supervisory authority, the Office of the Judge Advocate General pursuant to Article 69, UCMJ, the Navy-Marine Corps Court of Military Review, and the U.S. Court of Military Appeals. In order that each record of trial in courts-martial involving a punitive discharge or confinement at hard labor for one year or more shows compliance with paragraph 48k(3), MCM, especially with regard to advice concerning appellate representation, the following procedures shall be observed:

(1) The accused in a court-martial involving a punitive discharge or confinement at hard labor for one year or more shall, after being advised of his appellate rights, be requested to indicate his desires with regard to appellate representation by a statement in a form similar to that set forth in Appendix A-l-h.

(2) The original signed statement will be attached to the original record of trial in accordance with section 0120e(4).

(3) A duplicate original shall be provided to the accused and duplicate originals or certified copies shall be attached to each copy of the record of trial. The accused should also be advised of his authority to designate an attorney-in-fact as his agent to accept service of the Navy-Marine Corps Court of Military Review decision in his case and to petition the U.S. Court of Military Appeals for review on his behalf. Trial defense counsel should advise the accused of the advantages of granting an attorney-in-fact this authority and encourage the accused to execute one of the powers of attorney in the form set forth in Appendix A-1-j.

b. In accordance with the requirements of *United States v. Palenius*, 25 USCMA 222, 54 CMR 549, 2 M.J. 86 (CMA 1977), the trial defense counsel should request to be relieved of such duties by the authority before whom the case is then pending upon review, *i.e.*, the convening authority, the supervisory authority, the Judge Advocate General, the Navy-Marine Corps Court of Military Review, or the U.S. Court of Military Appeals. Relief from duties as trial defense counsel will ordinarily be predicated upon the assertion by the trial defense counsel that he or she will be unable to continue representation of the accused, or that appellate representation has been provided or waived. The authority effecting such relief shall ensure the uninterrupted representation of the accused. Relief will be accomplished by means of an order issued by the cognizant authority. The original correspondence and orders relating to the relief of counsel and the appointment of a successor counsel shall be placed in the original record of trial. Copies of all correspondence and orders relating to the relief of counsel and the appointment of successor counsel shall be placed in each copy of the record of trial and provided to the counsel concerned and the accused. There is no requirement for trial defense counsel or his successor in a special court-martial not involving a bad conduct discharge to request relief from defense counsel duties after supervisory review has been completed pursuant to Article 65(c), UCMJ.

0122 REVIEW BY STAFF JUDGE ADVOCATE

a. *Who may act.* Ordinarily the senior judge advocate attached to the command of an officer exercising general court-martial jurisdiction is the staff judge advocate of that command within the meaning of Articles 34, 61, and 65(a) and (b), UCMJ. If, however, more than one judge advocate is attached to such a command, and if it appears that the senior is or may become disqualified for any reason from acting as staff judge advocate in any particular case or for a specific period of time, a convening authority may, in addition to the action authorized by paragraph 85a, MCM, designate, in writing, a junior to act as his staff judge advocate in any particular case or for a specified period of time if that junior officer is otherwise qualified.

b. *Distribution of staff judge advocate's review.* In addition to the requirements of paragraph 85d, MCM, and section 0120e(2), a copy of the review of the staff judge advocate shall be forwarded to counsel for the accused at least five days prior to the action of the convening authority in order to afford counsel an opportunity to correct, challenge, or comment on the staff judge advocate's review and a copy of the staff judge advocate's review together with any comments thereon by counsel for the accused shall be forwarded to the command at which the accused is to be confined in order that it may be available to those charged with developing an institutional program for the individual. In addition to the foregoing, one copy of the review of the staff judge advocate together with any comments thereon by counsel for the accused shall be forwarded to the President, Naval Clemency and Parole Board, 801 North Randolph Street, Suite 905, Arlington, Virginia 22203, in those cases wherein the sentence includes confinement for eight months or more, or an unsuspended punitive discharge. The original and all copies must be legible.

0123 ACTION ON COURTS-MARTIAL BY CONVENING AUTHORITY

a. *Companion cases tried separately.* In court-martial cases where the separate trial of a companion case is ordered, the convening authority shall so indicate in his action on the record in each case.

b. *Suspension of sentences.* Convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence adjudged.

c. *Sentences including a punitive discharge.* In order that the best interests of the service as well as those of the accused may be served, the convening authority, in those cases where the sentence as approved by him extends to a punitive discharge, whether or not suspended, shall include in his initial action a brief synopsis of the accused's conduct record during the current enlistment or current enlistment as extended. This synopsis should include in chronological order: dates, nature of offenses committed, sentences adjudged and approved, and nonjudicial punishment imposed. The synopsis should also include medals and awards, commendations, and any other information of a commendable nature. Although not required, similar action may, if circumstances are deemed appropriate, be taken in other cases. The foregoing requirement does not in any way affect the legal requirements as to the admissibility of records of previous convictions during the trial itself. See also section 0123f.

d. *Sentences including censure.*

(1) *General.* Censures (reprimands and admonitions) issued in execution of court-martial sentences are required to be in writing. Except as otherwise prescribed in this section, the provisions of section 0102e(1), (2), and (3) shall be applicable to letters of censure issued in execution of a court-martial sentence.

(2) *By whom issued.* Letters of censure in execution of sentences of summary courts-martial shall be issued by the convening authority. In those special and general court-martial cases wherein a sentence imposing censure is ordered executed by the convening authority, he shall issue the letter as part of his action on the record in accordance with the provisions of paragraph 89c(9), MCM. Otherwise the letter shall be issued as part of the promulgating order of the officer who subsequently directs execution of the sentence.

(3) *Contents.* The letter shall include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It shall also contain the following paragraph:

> "A copy of this letter will be placed in your official record in [the Bureau of Naval Personnel] [Headquarters, U.S. Marine Corps]. You are therefore privileged to forward, within 15 days after receipt of this action, such statement concerning this letter as you may desire for inclusion in your record. If you elect not to submit a statement, you shall so state officially in writing within the time prescribed. In connection with your statement, you are advised that any statement submitted shall be couched

> in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement shall not contain countercharges."

(4) *Procedure for issuance.* The original letter shall be delivered to the accused and a copy appended to the convening authority's action (or the promulgating order of the officer subsequently directing execution of the sentence). The action (or order) should refer to the letter in the following tenor:

> "Pursuant to the sentence of the court, as herein approved, a letter of [reprimand] [admonition] is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action."

(5) *Forwarding copy to Department.* Upon receipt of the accused's written statement or his written declaration that he does not desire to make a statement, an additional copy, together with the statement or declaration, shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(6) *Appeals.* Review, including appellate review, of letters of censure issued as part of an approved court-martial sentence will be accomplished as provided for by the Uniform Code of Military Justice, the Manual for Courts-Martial, and this Manual with respect to the proceedings of the particular court-martial which imposed the sentence. No separate appeal from these letters will be considered.

e. *Designation of places of confinement.* The convening authority of a court-martial sentencing an accused to confinement is a competent authority to designate the place of temporary custody or confinement of naval prisoners. See section 0146.

f. *Cases involving convictions of larceny or other offenses involving moral turpitude.* If a punitive discharge has been approved, whether or not suspended, in a case involving conviction of larceny or other offense or offenses involving moral turpitude, the convening authority shall include in his action on the record facts which tend to extenuate, mitigate, or aggravate the offense or offenses and which do not appear in the court record or in the papers accompanying the same. In all cases in which the information to be so set forth in the action of the convening authority is not exclusively extenuating or mitigating, the convening authority shall refer a copy of the information to the accused before taking action on the case, and shall afford the accused an opportunity to rebut any part or portion of the information. A comment that such opportunity to rebut was afforded shall be included in the action of the convening authority, and any statement made by the accused in rebuttal shall be appended to such action. See paragraph 85b, MCM for limitations on consideration of adverse matter.

g. *Disagreement between convening authority and his staff judge advocate.* If the convening authority, in taking his action on a general court-martial, disagrees with the advice contained in the post-trial review, his options are set forth in paragraph 85c, MCM. Should the convening authority take an action different in any manner from that recommended by his staff judge advocate, he shall state the reasons for his action in a letter transmitting the record to the Judge Advocate General. A copy of this letter of transmittal shall be provided to the accused and his counsel.

0124 PROMULGATING ORDERS

a. *General and special courts-martial.*

(1) *When promulgating orders required.* Any action taken on the proceedings, findings, or sentence of a general or special court-martial by the convening authority or any other party empowered to take such action shall be promulgated as prescribed in paragraphs 90 and 91, MCM. Separate orders shall be issued for each accused in the case of a joint or common trial. See Note, appendix 15a, MCM, page A15-2.

(2) *When supplementary order is not required.* Where the findings and sentence set forth in the initial promulgating order are affirmed without modification upon subsequent review of the case, no supplementary promulgating order is required except as necessary to order the execution of the sentence or to designate a place of confinement.

(3) *Supplementary orders in U.S. Navy-Marine Corps Court of Military Review cases.* If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the approved findings and sentence have been affirmed without modification by the U.S. Navy-Marine Corps Court of Military Review and, in appropriate cases, the U.S. Court of Military Appeals, no supplementary court-martial order is necessary. A supplementary court-martial order shall be issued in all other cases. Such orders shall be published as follows:

(a) Supplementary orders in cases involving flag or general officers, death sentences, and dismissals are issued by the Judge Advocate General by direction of the Secretary of the Navy.

(b) Other supplementary orders shall be issued by the cognizant general court-martial authority. In cases not reviewed by the U.S. Court of Military Appeals (by petition or certification), orders should be issued immediately following the accused's execution of a "Request for Immediate Execution of Discharge" (see section 0135) or upon expiration of 60 days from the date of service of the U.S. Navy-Marine Corps Court of Military Review decision upon the accused. In cases considered by the U.S. Court of Military Appeals, supplementary orders should be issued upon notification of completion of review by the court.

(c) All supplementary orders in U.S. Navy-Marine Corps Court of Military Review cases shall bear the "MCM" number appearing on the U.S. Navy-Marine Corps Court of Military Review decision.

(4) *Form.* The form of a promulgating order is prescribed in appendix 15, MCM. In copying and including the action of the convening authority in the promulgating order, any synopsis of the accused's record and/or circumstances of the offense contained in the convening authority's action pursuant to section 0123c and/or section 0123f shall also be copied and included in the promulgating order. The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him. In either case the name, grade, and title of the subscribing officer, including his organization or unit, shall be given. Where a subordinate officer signs by direction, his name, title, and organization shall be followed by the words: "By direction of (name, grade, title, and organization of issuing officer)." A duplicate original of a promulgating order is a carbon copy as complete as the original in all respects, including the signature of the officer who signed the original, or an identical copy made by photographic or other duplicating process. A certified copy of a promulgating order is a copy bearing the statement "Certified to be a true copy" over the signature, grade, and title of an officer, or of an enlisted person in the Legalman rating (Navy), or in legal occupational fields (Marine Corps), of grade E-6 or above, who has been designated in writing by the officer issuing the promulgating order.

(5) *Distribution.* All initial and supplementary promulgating orders shall be distributed as follows (the original and all copies must be legible):

(a) Original to be attached to original record of trial.

(b) Duplicate original to be placed in the service record or service record book of the accused, unless the court-martial proceedings resulted in acquittal of all charges, disapproval of all findings of guilty, or disapproval of the sentence by the convening authority when no findings have been expressly approved by him. In those cases of Navy personnel, if applicable, forward to the Personnel Support Activity Detachment maintaining the accused's service record.

(c) Duplicate originals or certified copies: Three to be attached to the original record of trial.

One to be attached to each copy of the record of trial.

Two to the commanding officer of the accused if a brig or correctional center is designated as the place of confinement; three if a disciplinary command is designated as the place of confinement. These copies should accompany the records of the accused to the place of confinement.

One to the Chief of Naval Personnel (NMPC-8) or the Commandant of the Marine Corps, as appropriate.

One to the President, Navy Clemency and Parole Board, 801 North Randolph Street, Suite 905, Arlington, Virginia 22203, if the sentence, as approved by the convening authority, includes an unsuspended punitive discharge, dismissal, or confinement for eight months or more.

(d) Duplicate originals, certified copies, or plain copies:

One to the accused.

One each to the military judge, trial counsel, and defense counsel of the court-martial before which the case was tried.

One to the convening authority and, if the accused was serving in a command other than that of the convening authority at the time of the alleged offense, one to the command in which he was then serving.

One to each appropriate subordinate unit and any other local distribution desired.

b. *Summary courts-martial.* In accordance with paragraph 90e, MCM, the results of a trial by summary court-martial need be promulgated only to the accused. The results of any review or action on a summary court-martial pursuant to section 0125a, subsequent to the initial action of the convening authority, shall be communicated to the convening authority and to the commanding officer of the accused for notation in the service record or service record book of the accused.

0125 REVIEW OF SUMMARY AND SPECIAL COURTS-MARTIAL

a. *Summary courts-martial and special courts-martial not involving a bad conduct discharge.*

(1) *Officers having supervisory powers.* In addition to the officer immediately exercising general court-martial jurisdiction over a command, the Judge Advocate General, the Deputy Judge Advocate General, any Assistant Judge Advocate General, all officers exercising general court-martial jurisdiction, and the deputies or chiefs of staff of officers exercising general court-martial jurisdiction are designated as having supervisory authority for the review of records of trial pursuant to Article 65(c), UCMJ, and paragraph 94a(2), MCM.

(2) *Selection of supervisory authorities.* It is the policy of the Department of the Navy that review of cases pursuant to paragraph 94a(2), MCM will be accomplished in the field, unless compelling reasons exist for forwarding the record or records to the Judge Advocate General for review.

(a) For commands in a Navy chain of command, review pursuant to paragraph 94a(2), MCM will be accomplished, if practicable, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, by the area coordinator or a subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the record.

(b) For commands in the chain of command of the Commandant of the Marine Corps, review pursuant to paragraph 94a(2), MCM will be accomplished within the chain of command if practicable. If such accomplishment of the review is found not practicable, any officer having supervisory authority in the field may be requested to accept records of such cases and to act thereon pursuant to paragraph 94a(2), MCM. Only if all reasonably available officers having supervisory authority in the field find it impracticable to grant such requests, will the records in such cases be forwarded to the Judge Advocate General for review. If so forwarded to the Judge Advocate General, each record shall be accompanied by a letter stating the reasons why supervisory authority action was not accomplished in the field.

(3) *Courts in which an officer exercising general court-martial jurisdiction takes the convening authority's action.* When an officer exercising general court-martial jurisdiction acts as the convening authority in the review of a summary court-martial or a special court-martial not involving a bad conduct discharge, whether or not he convened the court, he shall after his initial action on the record, cause a judge advocate to review the record pursuant to Article 65(c), UCMJ. Procedure for such review shall follow that as prescribed in section 0125a(5).

(4) *Identification of officer to whom record is forwarded for supervisory review.* In all cases, the action of the convening authority in forwarding the record for supervisory review shall identify the officer to whom the record is forwarded by stating his official title, such as "The record of trial is forwarded to the Commandant, First Naval District, for action under Article 65(c), Uniform Code of Military Justice."

(5) *Review procedures.*

(a) In accordance with the provisions of paragraph 94a(2), MCM, the officer having supervisory authority shall cause a judge advocate to review records of trial received for review under Article 65(c), UCMJ. Unless, following such review, corrective or mitigating action by the officer having supervisory authority is required or recommended, no supervisory action need be taken. In lieu thereof, a notation may be made on the record of trial by the judge advocate who reviewed the record, reciting the designation of the command in which the review was accomplished, the date, the result of the review, and the signature of the judge advocate. In such cases, notification of the review and the result thereof will be made to the convening authority, the accused military defense counsel of record, and the commanding officer of the accused for notation in the service record or service record book of the accused. In cases in which corrective or mitigative action is required or recommended, action will be placed on the record of trial over the signature of the supervisory authority and a supplemental promulgating order will be issued (see 0124a(2)).

(b) If the officer having supervisory authority disagrees with the recommendation of the judge advocate as to the effect of any error or irregularity respecting the proceedings, as to the adequacy of the evidence, or as to what sentence can legally be approved, he shall not place an action on the record but shall forward the record to the Judge Advocate General, together with a signed copy of the judge advocate's recommendation, by a letter of transmittal giving his reasons for disagreement with the judge advocate's recommendation. When the question of law has been resolved by the Judge Advocate General, he may either take action on the record as the officer having supervisory authority, or he may return the record together with a final determination as to the law of the case, to the cognizant officer having supervisory authority for his action on the record.

(c) Any action on the record by the officer having supervisory authority shall affirmatively indicate that the record was reviewed by a judge advocate by including the statement "This record has been reviewed in accordance with Article 65(c), UCMJ."

b. *Special courts-martial involving a bad conduct discharge.*

(1) *Action by convening authority who is an officer exercising general court-martial jurisdiction.* When an officer exercising general court-martial juris-

diction is the convening authority of a special court-martial which involves a bad conduct discharge, and if such discharge is approved by him, the record shall be forwarded directly to the Navy-Marine Corps Appellate Review Activity for review by the U.S. Navy-Marine Corps Court of Military Review. In taking his action on the record, such a convening authority shall follow the procedures set forth in paragraph 85, MCM, and section 0123. In addition to forwarding the record of trial in accordance with paragraph 94a(3), MCM, such a convening authority will forward a copy of his action on the record to counsel for the accused.

(2) *Action by reviewing authority (officer exercising general court-martial jurisdiction).* In special court-martial cases where the sentence as approved by the convening authority who is not an officer exercising general court-martial jurisdiction includes a bad conduct discharge, review will be accomplished in accordance with paragraph 94a(3), MCM, and thereafter the reviewing authority, in addition to forwarding the record of trial in accordance with paragraph 94a(3), MCM, will forward a copy of his action on the record, or, where review under Article 65(b), UCMJ, cannot be accomplished in the field, as described hereinafter, a copy of the letter explaining why review under Article 65(b), UCMJ, was not accomplished, to the military defense counsel of record.

(a) For activities in a Navy chain of command, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, review will be accomplished by the area coordinator or a subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the record. As indicated above, a superior officer authorized to convene general courts-martial in the chain of command may direct otherwise; he may, for example, direct that records be forwarded to him for review.

(b) For activities in the chain of command of the Commandant of the Marine Corps, review will be accomplished by the officer ordinarily exercising general court-martial jurisdiction over the command.

In the event review by any of the foregoing is impracticable (e.g., because of the absence or lack of a staff judge advocate) any other officer authorized to convene general courts-martial may be requested to accept records of trial for review. Only if all reasonably available officers exercising general court-martial jurisdiction find it impracticable to grant such request will the records be forwarded directly to the Navy-Marine Corps Appellate Review Activity for review by the U.S. Navy-Marine Corps Court of Military Review. If so forwarded, they shall be accompanied by a letter stating the reasons why review under Article 65(b), UCMJ was not accomplished in the field.

(3) *Disagreement between reviewing authority and his staff judge advocate.* If the reviewing authority is in disagreement with any recommendation of his staff judge advocate concerning the appropriate action to take in the case, he shall take such action on the record as is within his discretionary powers notwithstanding the disagreement and shall transmit the record of trial, with an expression of his own views as to the matters of disagreement, to the Navy-Marine Corps Appellate Review Activity for review by the U.S. Navy-Marine Corps Court of Military Review. A copy of the letter of transmittal expressing the convening authority's views shall be provided to the accused and his counsel.

(4) *Disapproval of bad conduct discharge by reviewing authority.* If a reviewing authority determines that he will not approve that portion of the sentence which provides for a bad conduct discharge, he shall, prior to placing his action upon the record, cause the record to be reviewed by a judge advocate in accordance with Article 65(c), UCMJ, and in the manner set forth in section 0125a(3).

c. *Special courts-martial tried in joinder or in common.* When one or more of the sentences adjudged in cases tried in joinder or in common require review only under paragraph 94a(2), MCM (not involving an approved bad conduct discharge), and the remaining sentence or sentences require review under paragraph 94a(3), MCM (including an approved bad conduct discharge), the officer exercising general court-martial jurisdiction shall cause each of the sentences to be reviewed in accordance with the applicable paragraph of the MCM. In his action on the sentence or sentences requiring review under paragraph 94a(3), MCM, he shall state that the sentence or sentences requiring review only under paragraph 94a(2), MCM, have been reviewed in accordance with Article 65(c), UCMJ. The original of the action or review taken on the sentence or sentences requiring review only under paragraph 94a(2), MCM, shall be filed with the copy or copies of the record in the files of the officer exercising general court-martial jurisdiction, and a copy of such action or review shall be attached to the record forwarded to the Judge Advocate General, together with the action taken on the sentence or sentences requiring review under paragraph 94a(3), MCM.

0126 ACTION ON SPECIAL COURTS-MARTIAL BY GENERAL COURTS-MARTIAL CONVENING AUTHORITIES

a. *Suspension of sentences.* Officers exercising general court-martial jurisdiction are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence which was adjudged and approved by the convening authority.

b. *Designation of places of confinement.* The general court-martial convening authority who orders a sentence of confinement into execution subsequent to the initial action of the convening authority on the record shall designate the place of confinement in his action on the record. See also section 0146.

0127 SUPERVISION OVER COURT-MARTIAL RECORDS AND THEIR DISPOSITION AFTER REVIEW IN THE FIELD

a. *JAG supervision.* Records of all trials by courts-martial in the naval service are under the supervision of the Judge Advocate General of the Navy.

b. *Navy-Marine Corps Court of Military Review cases.* After completion of review in the field, all records requiring review by the Navy-Marine Corps Court of Military Review shall be forwarded to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

c. *Other general court-martial cases.* General court-martial cases which do not require review by the Navy-Marine Corps Court of Military Review under Article 66(b), UCMJ, shall be forwarded to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

d. *Summary courts-martial and special courts-martial not involving a bad conduct discharge.* The records of trial of such cases shall be filed as provided in section 0136.

0128 CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS, AND COURT-MARTIAL REPORT

Officers exercising general court-martial authority shall submit quarterly to the Judge Advocate General NAVJAG Form 5800/9 Criminal Activity, Disciplinary Infractions, and Court-Martial Report (Rev. 11-77). Such reports shall be submitted 25 January, 25 April, 25 July, and 25 October. RCS JAG 5800-4A. NAVJAG Form 5800/9A Supplemental Report to the Criminal Activity, Disciplinary Infractions, and Court-Martial Report (Rev. 11-77) is to assist officers exercising general court-martial authority in the collection of data from subordinate commands. RCS JAG 5800-4B. These forms containing sample entries are set forth in Appendix A-1-i.

0129 REMISSION AND SUSPENSION

a. *Authority to remit or suspend sentences.*

(1) *General.* Pursuant to the provisions of Article 74(a), UCMJ and paragraph 97a, MCM, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the Judge Advocate General, and all officers exercising general court-martial jurisdiction over the command to which the accused is attached are designated as empowered to remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President. However the Judge Advocate General shall not exercise this power in cases involving flag or general officers, and officers exercising general court-martial jurisdiction shall not exercise this power in cases involving officers or warrant officers. A sentence to death may not be suspended. Any action authorized by this subsection may be taken without regard to whether the person acting has previously approved the sentence.

(2) *Authority of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas.* Authority of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, to take action pursuant to Article 74(a), UCMJ, other than remission or suspension of any part or amount of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge, is limited to the following:

(a) Effecting actions directed by the Secretary following clemency review.

(b) Remission of uncollected forfeitures in the cases of court-martial prisoners who are to be returned to duty.

(c) Remission of confinement, not in excess of five days, for the purpose of facilitating administration by adjusting dates of transfer upon completion of confinement. Early releases in excess of five days may be granted when specifically authorized by the Chief of Naval Personnel for Navy prisoners and the Commandant of the Marine Corps for Marine Corps prisoners.

(d) In the event of an emergency, where, in the opinion of the commanding officer, the requirement to remit additional confinement or a punitive discharge is of such immediate nature as to preclude the normal or urgent processes of clemency as provided by SECNAVINST 5815.3 series, the commanding officer may take such action following report of the circumstances to, and having received concurrence in such action of, the Secretary of the Navy (Naval Clemency and Parole Board).

(e) Such other authority as may be specifically delegated in writing by the Secretary.

(3) *Inferior courts-martial.* Paragraph 97a, MCM grants power to remit or suspend any part or amount of the unexecuted portion of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge to the officer having supervisory authority (section 0125a) and the commanding officer of the accused who has immediate authority to convene a court of the kind that adjudged the sentence.

b. *Probationary period.* All suspensions shall be of the conditional remission type and shall be for a definite period of time. The running of the period of suspension of a sentence is interrupted either by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the sentence. The running of the period of suspension of a sentence resumes: (1) as of the date the probationer's unauthorized and unexcused absence ends; or (2) as of the date of the interruption, due to initiation of vacation proceedings, if proceedings to vacate suspension of the sentence are concluded without vacation of the suspension. For instructions concerning voluntary extension of enlistment for the purpose of serving probation, see SECNAVINST 5815.3 series.

c. *Liaison with Naval Clemency and Parole Board.* Officers who take clemency action pursuant to the authority of section 0129a on any sentence which includes a punitive discharge or confinement for eight months or more shall coordinate such action with the Naval Clemency and Parole Board in accordance with the provisions of SECNAVINST 5815.3 series.

0130 EFFECTIVE DATE OF CONFINEMENT AND FORFEITURES WHEN PREVIOUS SENTENCE NOT COMPLETED

a. *Confinement.* When a prisoner serving a sentence to confinement adjudged by court-martial is convicted by a court-martial for another offense and sentenced to a term of confinement, the subsequent sentence, upon being ordered into execution, will begin to run as of the date adjudged and will interrupt the running of the prior sentence. After the subsequent sentence has been fully executed, the prisoner will resume the service of any unremitted interrupted sentence to confinement.

b. *Forfeitures.* If forfeitures are being collected pursuant to a sentence adjudged by a previous court-martial at the time the convening authority takes action approving a sentence to forfeitures adjudged by a subsequent court-martial, he may, in his discretion, provide in his action that the application of forfeitures adjudged by the latter court-martial will be deferred until the date upon which the sentence to forfeitures adjudged by the previous court-martial has been fully executed.

0131 VACATION OF SUSPENSION

a. *Vacation of suspended general court-martial sentence or of a suspended special court-martial sentence including a bad conduct discharge.* Before the vacation of the suspension of any general court-martial sentence, or of a special court-martial sentence which, as approved, includes a bad conduct discharge, the officer having special court-martial jurisdiction over the probationer shall follow the procedures outlined at paragraph 97b, MCM, except that the officer exercising special court-martial jurisdiction over the probationer shall personally conduct the hearing on the alleged violation of probation. If the officer exercising general court-martial jurisdiction decides to vacate all or a portion of the suspended sentence, he must record the evidence upon which he relied and the reasons for vacating the suspension in his action. The counsel referred to in paragraph 97b, *MCM, 1969 (Rev.)* need not be the same counsel who originally represented the probationer. The probationer at a vacation hearing has no right to individual military counsel (IMC) of his own selection.

b. *Vacation of suspended special court-martial sentence not including a bad conduct discharge or of a suspended summary court-martial sentence.* Before the vacation of the suspension of a special court-martial sentence which, as approved, does not include a bad conduct discharge or of a summary court-martial sentence, the officer having authority to convene, for the command in which the probationer is serving or assigned, a court of the kind that imposed the sentence shall personally hold a hearing on the alleged violations of probation. The hearing shall be conducted in accordance with paragraph 97b, MCM, and the probationer shall be accorded the right to detailed counsel upon request, or civilian counsel at no expense to the Government, if he was entitled to such counsel at the court-martial which imposed the sentence. This counsel need not be the same counsel who originally represented the petitioner and the petitioner has no right to individual military counsel (IMC) of his own selection. If the officer with the authority to take such action decides to vacate all or a portion of the suspended sentence, he must record the evidence upon which he relied and the reasons for vacating the suspension in his action.

c. *Confinement of probationer prior to vacation of the suspended sentence.* When it is considered desirable to confine a probationer prior to vacation of a suspended sentence which includes confinement and/or a punitive discharge, a preliminary hearing must be held by an independent officer to determine whether there is probable cause or reasonable ground to believe that the service member has committed acts in violation of the conditions of the suspension. No determination of the need for confinement to ensure the presence of the probationer until vacation is accomplished or a decision not to vacate is reached by the cognizant authority is required or authorized. Officers serving as military magistrates should, where possible, be utilized to conduct these preliminary hearings.

d. *Form of order.* The forms prescribed in Appendix A-15-e, MCM, shall be used for promulgating orders vacating suspensions of sentences. In cases where Article 71(c), UCMJ, is applicable and appellate review is not complete, the final sentence of the appropriate form may be modified to read: "Upon completion of appellate review pursuant to Article 71(c), UCMJ, the sentence as affirmed may be executed without further order."

e. *Distribution of order.* The promulgating order shall be distributed in accordance with the applicable provisions of section 0124.

0132 APPROVAL OF SENTENCES EXTENDING TO DISMISSAL OF AN OFFICER

Pursuant to the authority of Article 71(b), UCMJ, the Under Secretary of the Navy and the Assistant

Secretaries of the Navy are designated as empowered to approve sentences extending to the dismissal of an officer (other than a general or flag officer), or such part, amount, or commuted form of such sentences as they see fit, and to suspend the execution of any part of the sentence as approved.

0133 SERVICE OF DECISION OF NAVY-MARINE CORPS COURT OF MILITARY REVIEW ON ACCUSED

a. *Promulgation packages.* When, in accordance with the provisions of paragraph 100c, MCM, the Judge Advocate General elects not to certify a case to the U.S. Court of Military Appeals, a "promulgation package" will be prepared by his office and forwarded to the officer immediately exercising general court-martial jurisdiction over the command to which the accused is attached. The package shall include copies of the Navy-Marine Corps Court of Military Review decision, a copy of the initial and supplementary court-martial orders, an endorsement (on the accused's copy of the decision) notifying him of his right to petition for review, a form of petition for review, and a postcard receipt to be signed by the accused. The package normally will also include directions to take action in accordance with the provisions of this section; however, detailed instructions may be included. Additionally, the package will normally contain sufficient copies of the Navy-Marine Corps Court of Military Review decision to provide, as a matter of courtesy, a copy to the military judge, trial counsel, and the appointed trial defense counsel. As an additional matter of courtesy, the officer exercising general court-martial authority may duplicate extra copies of the Navy-Marine Corps Court of Military Review decision for delivery to individual military defense counsel and civilian defense counsel, if any.

b. *Delay in service.* Delivery of the Navy-Marine Corps Court of Military Review decision to the accused shall be accomplished as soon as possible, unless delay is expressly authorized by the Judge Advocate General.

c. *Change in place of confinement.* To avoid delay in service, it is imperative that the Judge Advocate General, as well as the designated confinement activity, be notified when the place of confinement or temporary custody, as designated in the initial court-martial order, is changed. In addition, any activity which receives information indicating that a promulgation package has been misaddressed because of any such change shall immediately notify those concerned.

d. *Action by general court-martial authority.* Upon receipt of a promulgation package, the officer exercising general court-martial jurisdiction will determine whether the accused is still under his jurisdiction. He shall also take reasonable steps to forward a copy of the Navy-Marine Corps Court of Military Review decision for delivery to the military judge, trial counsel, and each defense counsel. The inclusion of copies of the Court's decision in the promulgation package for the military judge and all counsel, and the delivery of such copies to them, including those prepared for delivery by the general court-martial authority to individual military defense counsel and the civilian defense counsel, if any, is a matter of courtesy, not a matter of right.

(1) *Accused transferred.* If the accused has been transferred from that jurisdiction, the package will be forwarded by endorsement (copy to Judge Advocate General) to the officer currently exercising general court-martial jurisdiction over the accused. If the current location of the accused is unknown, communication by expeditious means to the convening authority should be initiated, keeping the Judge Advocate General informed.

(2) *Accused present.* If the accused is under the jurisdiction of the recipient of the promulgation package and present within his command, action shall be taken as follows:

(a) The accused's copy of the Navy-Marine Corps Court of Military Review decision, with the endorsement thereon, and the petition for review form shall be delivered to the accused.

(b) The accused's signature should be obtained on the postcard receipt. If the accused refuses to sign the receipt, a certificate of personal service reciting the facts shall be prepared.

(c) The date of service shall be noted on the copy of the Navy-Marine Corps Court of Military Review decision marked for the general court-martial authority and the copy marked for the accused's commanding officer, if appropriate, and the copies filed accordingly.

(d) The postcard receipt or certificate of personal service should be forwarded promptly to the Judge Advocate General.

(3) Accused on leave awaiting appellate review, administratively separated prior to completion of appellate review, or absent without leave from his assigned ship or station. When personal delivery of the accused's copy of the decision of the U.S. Navy-Marine Corps Court of Military Review cannot be accomplished because the accused is on leave awaiting appellate review pursuant to Art. 76a, UCMJ, and the provisions of the Naval Military Personnel Manual or Marine Corps Orders, as appropriate, the accused has been administratively separated prior to completion of appellate review, or the accused is absent without leave from his assigned ship or station, the following shall apply:

(a) The service of a copy of the decision of the U.S. Navy-Marine Corps Court of Military Review upon the appellate defense counsel of record, if any, will ordinarily be accomplished by the Clerk of the Court. If the promulgation package does not indicate that such service has been accomplished, if required, the officer exercising general court-martial jurisdiction over the command to which the accused was last attached will promptly notify the Officer in Charge, U.S. Navy-Marine Corps Appellate Review Activity, who shall cause a copy of the decision of the U.S. Navy-Marine Corps Court of Military Review to be served upon the appellate defense counsel of record, if any, personally or by certified mail.

(b) Upon notification of such service upon the appellate defense counsel, if required, the officer exercising general court-martial jurisdiction will forward the promulgation package by first class certified mail to the accused at an address provided by the accused prior to departing on appellate leave or administrative separation, or if no such address has been provided by the accused or the accused is an unauthorized absentee, to the latest address listed by the accused in his official service record.

(c) The general court-martial authority shall cause a certificate of service by certified mail to be executed, and together with the original and one copy of the postal receipt for certified mail, indicating the date of such mailing, to be promptly forwarded to the Judge Advocate General.

(4) *Return of accused or notification of correct address within appeal period.* If the accused returns to his assigned ship or station or advises his commanding officer of his correct address within the 60-day-appeal period and has not received his copy of the Navy-Marine Corps Court of Military Review decision, a copy of the promulgation package shall be served upon him as provided in subsections d(2) or (3) above, as appropriate. If he returns to the naval service within the appeal period at some place other that his assigned ship or station, the promulgation package, a copy of the certificate of service by certified mail, and a copy of the postal receipt of first class certified mail shall be transmitted by the most expeditious means to such place for personal service upon him. In either case, the required endorsement, notifying the accused of his right to petition the U.S. Court of Military Appeals, should be modified by appropriate endorsement informing him that his appeal period is limited to 60 days from the date of the mailing of the Navy-Marine Corps Court of Military Review decision by certified mail. A receipt from the accused for his copy of the decision of the Navy-Marine Corps Court of Military Review or certificate of service by certified mail, as appropriate, and the postal receipt of first class certified mail shall be forwarded to the Judge Advocate General.

(5) *Effect of the mailing of the decision of the Navy-Marine Corps Court of Military Review by first class certified mail.* The date of the mailing of the decision of the Navy-Marine Corps Court of Military Review constitutes notification to the accused and commences the running of the 60-day appeal period. If no petition for review has been filed with the U.S. Court of Military Appeals, action will be taken in the same manner as though the accused had been served personally on the date of such mailing.

0134 EXECUTION OF SENTENCE

a. *General.* When the sentence of an enlisted man or warrant officer as affirmed by the Navy-Marine Corps Court of Military Review includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for one year or more, it may not, except as provided in section 0135, be executed until completion of appellate review, i.e., expiration of the 60-day appeal period if no petition for review is filed, or final review by the U.S. Court of Military Appeals. When such sentence as affirmed by the Navy-Marine Corps Court of Military Review does not include, unsuspended, a dishonorable or bad conduct discharge, or confinement for one year or more, it may be executed without further delay. See section 0124 for requirements concerning issuance of promulgating orders.

b. *Execution of punitive discharge.* In addition to the foregoing requirements, and notwithstanding the fact that the sentence may have been duly ordered executed, a punitive discharge may not in fact be executed until the provisions of SECNAVINST 5815.3 series have been complied with.

0135 REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE

a. *General.* Prior to completion of appellate review, an accused may request immediate execution of the unexecuted portion of his sentence, following completion of the confinement portion thereof, if any, in those cases in which his sentence as affirmed by the Navy-Marine Corps Court of Military Review:

(1) Includes an unsuspended punitive discharge; and

(2) Either does not include confinement, or the confinement portion thereof has been or will be completed prior to 30 days from the date the accused is served with a copy of the Navy-Marine Corps Court of Military Review decision.

b. *Conditions of approval.* Such requests may be approved by the officer exercising general court-martial jurisdiction subject to the following conditions:

(1) That the accused has received a copy of the decision of the Navy-Marine Corps Court of Military Review in his case;

(2) That the accused has had fully explained to him his right to petition the U.S. Court of Military Appeals for grant of review;

(3) That the accused does not have an appeal pending before the U.S. Court of Military Appeals;

(4) That the accused does not intend to appeal to the U.S. Court of Military Appeals but, nevertheless, understands that his request for immediate release does not affect his right seasonably to petition the U.S. Court of Military Appeals;

(5) That the accused has consulted counsel of his own choice; and

(6) That Naval Clemency and Parole Board review, under the provisions of SECNAVINST 5815.3 series, if applicable, has been completed.

c. *Execution of unexecuted portion of sentence.* Upon approval of such requests, the officer exercising general court-martial jurisdiction shall order the unexecuted portion of the sentence to be duly executed.

d. *Form of request for immediate execution of discharge.* The prescribed form is set forth in Appendix A-1-k. Three signed copies of the request shall be transmitted to the Judge Advocate General.

0136 FILING OF COURT-MARTIAL RECORDS

a. *General courts-martial.* All records of trial by general court-martial shall, after completion of final action, be filed in the Office of the Judge Advocate General.

b. *Special courts-martial.* Records of trial by special court-martial which (1) involve an officer accused or (2) have been acted upon by the Navy-Marine Corps Court of Military Review, including those cases which have been returned to the officer exercising general court-martial jurisdiction for further action, shall, after completion of final action, be filed in the Office of the Judge Advocate General. All other special court-martial records shall be filed in the manner provided below for summary courts-martial.

c. *Summary courts-martial.*

(1) *Shore activities.* Officers having supervisory authority who are in command of shore activities shall retain original records of proceedings for a period of two years after final action. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, (Military Personnel Records), General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132.

(2) *Fleet activities.* Officers having supervisory authority who are in command of fleet activities, including Fleet Air Wings and Fleet Marine Forces, shall retain original records of proceedings for a period of three months after final action. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, (Military Personnel Records), General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132.

PART E–MISCELLANEOUS MATTERS

0137 FINANCIAL RESPONSIBILITY FOR COSTS INCURRED IN SUPPORT OF COURTS-MARTIAL

Financial responsibility for costs incurred as the result of necessary activities of appointees to or witnesses called before courts-martial will be governed by the following:

a. *Travel, per diem, fees, and mileage.*

(1) The costs of travel and per diem of military personnel and civilian employees of the Department of the Navy, but excluding that of personnel attached to the Navy-Marine Corps Trial Judiciary, when acting as military judges of courts-martial, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by personnel attached to the Navy-Marine Corps Trial Judiciary, when acting as military judges of courts-martial, will be charged to the operation and maintenance allotment of the Judge Advocate General, or as provided in memorandums of understanding between the Judge Advocate General and Commandant of the Marine Corps.

(2) The costs of fees and mileage of civilians other than employees of the Department of the Navy will be charged to the operating budget which supports the temporary additional duty travel funds of the appropriate Navy or Marine Corps convening authority. See, change 17, Navy Comptroller Manual, Volume VIII, paragraph 075145.

b. *Services and supplies.*

(1) The following costs of services and supplies provided by an activity in support of courts-martial will be charged to the operation and maintenance allotment of the convening authority:

(a) In-house costs which are direct, out-of-pocket, identifiable, and which total $100 or more in a calendar month; and

(b) Costs which arise under contracts which were entered into in support of courts-martial.

(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity which provides the services or supplies.

0138 FEES OF CIVILIAN WITNESSES

a. *Method of payment.* The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed, public voucher for such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial.

(2) Summary court officer.

(3) Counsel for the court in a court of inquiry.

(4) Recorder or junior member of a board to redress injuries to property.

(5) Military or civil officer before whom a deposition is taken.

The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, Vol. 2, Chap. 5), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before changes are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its Territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

b. *Obtaining money for advance tender or payment.* Upon written request by one of the officers listed in subsection a. above, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in subsection a above, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

c. *Reimbursement.* If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in subsection a above, to the effect that the payment was necessary.

d. *Certificate of person before whom deposition is taken.* The certificate of the person named in subsection a above, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned. See paragraph 117b(9), MCM.

e. *Payment of accrued fees.* The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

f. *Computation.* Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

g. *Non-transferability of accounts.* Accounts of civilian witnesses may not be transferred or assigned.

h. *Signatures.* Signatures of witnesses signed by mark must be witnessed by two persons.

i. *Rates for civilian witnesses prescribed by law.*

(1) *Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a naval tribunal, or at a place where his deposition is to be taken for use before such court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. 1821. Witness and subsistence fees are not prorated. Instead any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this subsection shall be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to witnesses for:

(a) attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of invitational orders; or

(b) for travel which is performed prior to being duly summoned as a witness; or

(c) for travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this subsection.

(2) *Civilian witnesses in Government employ.* A civilian in the employ of the Government, when summoned as a witness, shall be paid as authorized by Joint Travel Regulations.

j. *Supplemental construction of section.* Nothing in this section shall be construed as permitting or requiring the payment of fees to those witnesses not requested in accordance with paragraph 115a, MCM, or whose testimony is determined not to meet the standards of relevancy and materiality set forth in that paragraph.

k. *Expert witnesses.*

(1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the nearest officer exercising general court-martial jurisdiction having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commander, Naval Base, Pearl Harbor. See subsection 1. below for fees payable to foreign nationals.

(2) The provisions of subsection i above are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with paragraph 116, MCM, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

l. *Payment of witness fees to foreign nationals.* Officers exercising general court-martial jurisdiction in areas other than a state of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

0139 WARRANTS OF ATTACHMENT

Warrants of attachment shall not be issued without prior approval of the Judge Advocate General, acting for the Secretary of the Navy, in each case.

0140 SECURITY OF CLASSIFIED MATTER IN JUDICIAL PROCEEDINGS

a. *General.* Every precaution shall be taken by convening authorities, military judges, presidents of special courts-martial, summary courts, and trial counsel to protect the security of classified matter involved in judicial proceedings. If a trial of a case involves classified information, the convening authority, military judge, president of a special court-martial, summary court, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of OPNAVINST 5510.1 series and paragraph 33f, MCM.

b. *Security clearance of personnel.* If classified matter is to be used for prosecution, appropriate personnel security clearances in accordance with the Department of the Navy Security Manual for Classified Information must be granted to all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court. If the accused is represented by civilian defense counsel, such counsel must likewise be cleared before classified matter may be disclosed to him. The necessity for clearing the accused himself, and the practicability of obtaining such clearance rests in the sound discretion of the convening authority and may be one of the considerations in his determination that permission to try a particular case be requested from the Secretary of the Navy in accordance with the provisions of paragraph 33f, MCM. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this subsection have not been complied with, the military judge or president of a special court-martial or summary court shall adjourn the court and refer the matter to the convening authority.

c. *Procedures concerning spectators.* See section 0115 which prescribes procedures necessary to prevent the dissemination of classified information to other than authorized persons.

0141 JAG ETHICS COMMITTEE

a. *Establishment and membership.* There is established in the Office of the Judge Advocate General a standing committee entitled the JAG Ethics Committee, which is comprised of the Assistant Judge Advocate General (Civil Law), who is to act as chairman; the Assistant Judge Advocate General (Military Law); the Assistant Judge Advocate General (Military Personnel and Management); the Deputy Director, Judge Advocate Division, Headquarters, Marine Corps; and the Executive Assistant, who is to act as recorder.

b. *Functions.* The committee will consider ethical problems and allegations of malpractice which may arise within the judge-advocate community, serve as liaison with the other military services and law associations in such matters, and submit recommendations, as appropriate to the Judge Advocate General.

0142 SUSPENSION OF COUNSEL

a. *General.* When a person, military or civilian, has, pursuant to paragraph 43, MCM, and these regulations, been suspended from acting as counsel before courts-martial and the U.S. Navy-Marine Corps Court of Military Review, he shall not, during the period of such suspension, be eligible to so act. Such suspension is separate and distinct from any matter involving contempt, discussed in paragraphs 10 and 118, MCM, and from withdrawal of certification made pursuant to Articles 26 and 27, UCMJ.

b. *Grounds for suspension.* Suspension shall be accomplished only when, by his personal or professional conduct, a person has demonstrated that he is so lacking in competency, integrity, or ethical or moral character as to be unacceptable as counsel before a court-martial or the U.S. Navy-Marine Corps Court of Military Review. Specific grounds for suspension include, but are not limited to:

(1) Demonstrated incompetence while acting as counsel during pretrial, trial or post-trial stages of a court-martial;

(2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics;

(3) Fabricating papers or other evidence;

(4) Tampering with a witness.

(5) Abusive conduct toward the court-martial, the U.S. Navy-Marine Corps Court of Military Review, the military judge, or opposing counsel;

(6) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel (see paragraphs 42, 44, 46, and 48, MCM);

(7) Conviction of an offense involving moral turpitude or conviction of a violation of Article 48, UCMJ;

(8) Disbarment by a State or Federal court or the U.S. Court of Military Appeals; or

(9) Indefinite suspension as counsel by the Judge Advocate General of the Army or Air Force or the General Counsel of the Treasury Department.

Action to suspend should not be initiated because of personal prejudiçe or hostility toward counsel, nor should such action be initiated because counsel has presented an aggressive, zealous, or novel defense, or when his apparent misconduct as counsel stems from inexperience or lack of instruction in the performance of legal duties. The Code of Professional Responsibility of the American Bar Association is considered to be generally applicable as rules of professional conduct for persons acting as counsel before naval courts-martial and the Navy Court of Military Review, and is quoted, in part, for guidance:

"DR 2-110 Withdrawal from Employment.

"(A) In general.

"(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

"(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

"(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

"(B) Mandatory withdrawal.

"A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

"(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

"(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

"(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

"(4) He is discharged by his client.

"(C) Permissive withdrawal.

"If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

"(1) His client:

"(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

"(b) Personally seeks to pursue an illegal course of conduct.

"(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

"(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

"(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

"(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

"(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

"(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

"(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

"(5) His client knowingly and freely assents to termination of his employment.

"(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

"DR 4-101 Preservation of Confidences and Secrets of a Client.

"(A) 'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

"(B) Except when permitted under DR 4-101 (C), a lawyer shall not knowingly:

"(1) Reveal a confidence or secret of his client.

"(2) Use a confidence or secret of his client to the disadvantage of the client.

"(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

"(C) A lawyer may reveal:

"(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

"(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

"(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

"(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

"(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101 (C) through an employee."

"DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer .

"(A) A lawyer shall decline proffered employment if the excerise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105 (C).

"(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105 (C).

"(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the excerise of his independent professional judgment on behalf of each.

"(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment."

DR 6-101 Failing to Act Competently.

"(A) A lawyer shall not:

"(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

"(2) Handle a legal matter without preparation adequate in the circumstances.

"(3) Neglect a legal matter entrusted to him."

"DR 7-101 Representing a Client Zealously.

"(A) A lawyer shall not intentionally:

"(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101 (B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

"(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

"(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102 (B).

"(B) In his representation of a client, a lawyer may:

"(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

"(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

"DR 7-102 Representing a Client Within the Bounds of the Law.

"(A) In his representation of a client, a lawyer shall not:

"(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

"(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

"(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

"(4) Knowingly use perjured testimony or false evidence.

"(5) Knowingly make a false statement of law or fact.

"(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

"(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

"(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

"(B) A lawyer who receives information clearly establishing that:

"(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

"(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

"DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.

"(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

"(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

"DR 7-104 Communicating With One of Adverse Interest.

"(A) During the course of his representation of a client a lawyer shall not:

"(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

"(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client."

"DR 7-106 Trial Conduct.

"(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

"(B) In presenting a matter to a tribunal, a lawyer shall disclose:

"(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

"(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

"(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

"(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissable evidence.

"(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

"(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

"(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

"(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

"(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

"(7) Intentionally or habitually violate any established rule of procedure or of evidence.

"DR 7-107 [sections (A) - (E)] Trial Publicity. [See also: section 0115]

"(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

"(1) Information contained in a public record.

"(2) That the investigation is in progress.

"(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

"(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

"(5) A warning to the public of any dangers.

"(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

"(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

"(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

"(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

"(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

"(5) The identity, testimony, or credibility of a prospective witness.

"(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

"(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

"(1) The name, age, residence, occupation, and family status of the accused.

"(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

"(3) A request for assistance in obtaining evidence.

"(4) The identity of the victim of the crime.

"(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

"(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

"(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

"(8) The nature, substance, or test of the charge.

"(9) Quotations from or references to public records of the court in the case.

"(10) The scheduling or result of any step in the judicial proceedings.

"(11) That the accused denies the charges made against him.

"(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

"(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence."

c. *Action to suspend.*

(1) *General.* Action to suspend a person from acting as counsel before courts-martial and the Navy Court of Military Review will be initiated only when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to suspension of counsel, full consideration shall be given to the effectiveness and appropriateness of such measures as warning, admonition, instruction, proceedings in contempt and other punitive action.

(2) *Report of grounds for suspension.* When information as to the occurrence or existence of any ground for suspension comes to the attention of a member of a court-martial, a military judge, appointed counsel, staff judge advocate, or member of the Navy Court of Military Review, such information shall be reported, together with appropriate supporting information, to the officer exercising general court-martial jurisdiction over the command of such reporting officer or to the Judge Advocate General. Prompt action shall be taken by the recipient of such report to dispose of the matter in the interest of proper administration of justice, except that, if the alleged disqualifying conduct occurs during the trial of a particular case and involves counsel for the accused, action may be deferred pending completion of the trial. RCS JAG 5813-5.

(3) *Hearing.* If the officer exercising general court-martial jurisdiction or the Judge Advocate General is of the opinion that there is probable cause to believe that a ground for suspension exists, and that other remedial measures are not appropriate or will not be effective, he shall appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether the person involved should be temporarily or indefinitely suspended. The board so appointed shall consist of two or more members who are certified as qualified to act as military judge or counsel of general courts-martial pursuant to Article 26 or 27, UCMJ. The board shall cause notice to be given to the counsel concerned, informing him of the misconduct or other disqualification alleged and affording him the opportunity to appear before it for a hearing. The counsel shall be permitted at least five days subsequent to notice to prepare for a hearing. Failure to appear on a set date subsequent to notice will constitute a waiver of appearance. Upon ascertaining the relevant facts after notice and hearing, the board will report its findings and recommendations based thereon to the officer who appointed the board. If the board was not convened by the Judge Advocate General, the officer who appointed the board shall, (unless he deems the investigation incomplete, in which case he may direct further investigation and hearing) forward the report of the board to the Judge Advocate General together with his comments and recommendations concerning suspension of the person involved.

(4) *Action by the Judge Advocate General.* Upon receipt of the report of a board, the Judge Advocate General shall determine whether the person involved shall be suspended as counsel and whether such suspension shall be for a stated term or indefinite, and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon petition of the person who has been suspended, and upon good cause shown, or upon his own motion, modify or revoke any prior order of suspension.

(5) *Effect upon other actions.* Notwithstanding these regulations, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as military judge or as counsel before general courts-martial made pursuant to Article 26 or 27, UCMJ.

0142A ALLEGATIONS OF MISCONDUCT OR DISABILITY OF MILITARY JUDGES; REVOCATION OF CERTIFICATION

a. *General.*

(1) The demands of military justice require that military judges maintain the highest standards of professional competence and ethical conduct. An indispensable component of such standards is the requirement that military judges exercise independent judgment, unhampered by fear of undue criticism, and unswayed by partisan or pecuniary interests. The Judge Advocate General is vested with the authority and concomitant obligations of ensuring that such standards are maintained and of preserving the integrity of judicial independence.

(2) The procedures prescribed herein provide a mechanism whereby the Judge Advocate General may ensure that judicial competence and conduct remain at the highest level, while preserving to the maximum extent the cherished concept of an independent judiciary.

(3) The procedures prescribed herein are not to be used to attack collaterally the merits of any substantive or procedural ruling of a military judge, or any other judicial decision reviewable under any provision of law.

(4) It is the policy of the Judge Advocate General that any action or recommendation to revoke the certification of a military judge will normally be initiated only when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to decertification of a military judge, full consideration shall be given to the effectiveness and appropriateness of such measures as therapy, warning, instruction, and punitive action.

b. *Report of allegations of misconduct or disability.*

(1) When information comes to the attention of a member of a court-martial, a military judge, appointed counsel, staff judge advocate, or member of the U.S. Navy-Marine Corps Court of Military Review indicating that a person acting or about to act as trial judge is or has been unable to discharge properly all the duties of his or her office by reasons of mental or physical disability, or is or has been guilty of professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or judicial demeanor or is otherwise unworthy or unqualified to perform the duties of a military judge, such information should be reported to the Chief Judge, Navy-Marine Corps Trial Judiciary.

(2) Action may, when appropriate, be initiated to revoke his or her certification to act as a military judge under Article 26 of the UCMJ.

c. *Form of Report.*

The report shall:

(1) Be in writing and be signed, under oath, by the individual reporting the information;

(2) State that the individual reporting the information has personal knowledge or belief or has otherwise received reliable information indicating that:

(a) The military judge is, or has been, unable to discharge properly all the duties of his or her office by reason of mental or physical disability; or

(b) The military judge is or has been guilty of professional or personal misconduct of such serious nature as to demonstrate that he or she is lacking in integrity or judicial demeanor; or

(c) The military judge is otherwise unworthy or unqualified to perform the duties of a military judge.

(3) Set forth the grounds of the allegation together with all facts relevant thereto; and

(4) Be forwarded to the Chief Judge, Navy-Marine Corps Trial Activity, via the cognizant Circuit Judge (unless that officer is the subject of the report).

d. *Consideration of the Complaint by the Chief Judge, Navy-Marine Corps Trial Activity.*

(1) Upon receipt of the report, the Chief Judge:

(a) Shall dismiss any report relating to the merits of any substantive or procedural ruling of a military judge, or any other judicial decision reviewable under any provision of law, and return the report to the reporting individual.

(b) Shall consider the appropriateness of temporarily reassigning the military judge to nonjudicial duties, pending completion of investigation, hearing, and such other proceedings as may be necessary for full resolution of the issues; if the Chief Judge determines that such assignment is appropriate, he may so order.

(i) Temporary reassignment shall not normally be appropriate unless the requirements of military justice unequivocally demand otherwise. Factors which would support such a finding include, but are not limited to, the following:

(A) The nature of the misconduct alleged is clearly prohibited by those A.B.A. Canons of Professional and Judicial Conduct applicable to military justice.

(B) There is a substantial likelihood that the misconduct or disability alleged will result in revocation of certification.

(C) The nature of the disability or misconduct alleged would bring into doubt the fairness of judicial proceedings conducted by the military judge.

(ii) The order of temporary reassignment shall not relieve a presiding military judge from duties in courts-martial in which, at the time of the signing of the order, the court has been previously assembled, unless a contrary intent is expressly stated in such order.

(c) May direct that an officer be appointed to investigate informally the allegations of the report to determine whether further action is warranted. Any officer so appointed shall be a judge advocate, certified as qualified to act as military judge or as counsel in a general court-martial (Articles 26 and 27, UCMJ), and shall be senior in rank to the military judge who is the subject of the investigation (*hereinafter* the respondent).

(2) If, based upon informal investigation, the Chief Judge is of the opinion that there is reasonable cause to believe that a ground for temporary or permanent revocation of certification exists, and that other remedial measures are not appropriate or will not be effective, he shall appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether judicial discipline or decertification is appropriate. The board so appointed shall be comprised of at least 3 officers, each member of which shall be senior in rank to the respondent, and shall be a judge advocate, certified to act as counsel for a general court-martial (Article 27, UCMJ), and at least one-third of whom are certified as qualified to act as military judges (Article 26, UCMJ). If the respondent is a member of the Marine Corps, the majority of the members of the board shall be Marine Corps judge advocates.

(3) The senior officer of the board shall cause notice to be given to the respondent, informing him or her of the misconduct or other disqualification alleged and affording him or her the opportunity to appear before it for a hearing. The respondent shall be permitted at least ten (10) days subsequent to receipt of notice to prepare for a hearing. Failure to appear on a set date subsequent to notice may constitute a waiver of appearance. The respondent shall be afforded the rights of a party, as set forth in section 0304 of this Manual, except that, in the event the respondent wishes to have military counsel appointed to represent him or her, he or she shall not be afforded the right to select or identify a particular military counsel for that purpose. Upon ascertaining the relevant facts after notice and hearing, a written report of the findings and recommendations based thereon will be made to the Chief Judge, and a copy thereof shall be provided to the respondent. The respondent shall be given an opportunity to comment on the report.

(4) The Chief Judge shall (unless he or she deems the investigation incomplete, in which case he or she may direct further proceedings) forward the report of the investigation to the Judge Advocate General, together with his or her comments and recommendations relative thereto.

e. *Grounds justifying disciplinary sanction of or decertification of a military judge.*

(1) Applicable Standards of Conduct.

(a) In accordance with the provisions of Sections 0142b and Appendix A-1-p(1) of this Manual, the following standards of the American

Bar Association are generally applicable as a guide to the personal and professional conduct of military judges:

(i ABA Code of Judicial Conduct.

(ii) ABA Code of Professional Responsibility.

(iii) ABA Fair Trial and Free Press.

(iv) ABA Function of the Trial Judge.

(b) In view of the unique mission and personal requirements of the military setting, the letter of many of the canons of the above-mentioned codes are not applicable to the military judge and lawyer. Accordingly, the codes are to be used as a guide only, and a failure to comply with a specific wording of a canon is not to be construed as a violation of the codes where common sense would indicate to a reasonable person that there is a distinction between the civilian context, which the codes were drafted to embrace, and the unique concerns of the military setting, wherein the codes serve as a general guide.

(c) Those standards of personal and professional conduct relating to the military judge and lawyer set forth in the Uniform Code of Military Justice, the *Manual for Courts-Martial, 1969 (Rev.)*, and this Manual govern the conduct of the military judge.

(2) Where consistent with the statement of policy set forth in subsection a of this section, and with the provisions of subsection b of this section, specific grounds justifying disciplinary sanction of or decertification of a military judge include, but are not limited to, the following:

(a) The military judge has willfully violated an applicable standard of personal or professional conduct.

(b) The military judge has been convicted of any felony, or of a misdemeanor involving moral turpitude.

(c) The military judge has been disbarred by a state or Federal court of the United States.

(d) The military judge has been convicted of a violation of Article 48, UCMJ.

(e) The military judge has clearly demonstrated incompetence while acting as military judge during pretrial, trial or post-trial stages of a court-martial.

f. *Action by the Judge Advocate General.*

(1) Upon receipt of the report of the Chief Judge, Navy-Marine Corps Trial Judiciary, the Judge Advocate General shall determine whether the respondent shall be decertified as qualified to act as military judge and whether such decertification shall be for a stated term or indefinite; or whether the findings of the board do not warrant further action; and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon his motion or upon petition of the respondent, modify or revoke any prior order of decertification or dismissal of a report.

(2) Notwithstanding these regulations, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as a military judge made pursuant to Article 26, UCMJ.

0143 PETITION FOR NEW TRIAL UNDER ARTICLE 73, UCMJ

a. *Statutory provisions.* Article 73, UCMJ, provides, "At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition."

b. *Time limitations.* If the petition for new trial was placed in military channels within two years after approval of a sentence by the convening authority, regardless of the date of its receipt in the Office of the Judge Advocate General, it shall be considered to have been seasonably filed. Except in extraordinary circumstances, petitions will not be acted upon by the Judge Advocate General until all reviews in the field, contemplated by Article 65, UCMJ, have been completed.

c. *Submission procedures.* If the petitioner is on active duty the petition shall be submitted to the Judge Advocate General via the petitioner's commanding officer, the command which convened the court, and the command that took supervisory authority action on the case. If the supervisory authority has the record of trial he will forward it as an enclosure to his endorsement on the petition. The endorsement shall include information and comments as deemed appropriate. If the petitioner is no longer on active duty the petition may be submitted directly to the Judge Advocate General. If more than one court-martial is involved, a separate petition shall be filed for each trial.

d. *Contents of petitions.* The form and contents of petitions for new trial are specified in paragraph 109e, MCM. In addition, the petition shall include the following:

(1) Place of trial.

(2) Command title of the organization at which the court-martial was convened (convening authority).

(3) Command title of the officer exercising general court-martial jurisdiction over the petitioner at the time of trial (supervisory authority).

(4) Type of court-martial which convicted the petitioner.

e. *Receipt in the Office of the Judge Advocate General.*

(1) If the case is pending before the Navy-Marine Corps Court of Military Review or the U.S. Court of Military Appeals, or will be so pending, the petition will be referred for action to the Navy-Marine Corps Court of Military Review or the U.S. Court of Military Appeals, as appropriate. If referred for action to the Navy-Marine Corps Court of Military Review, such court shall take action in accordance with Courts of Military Review Rules of Practice and Procedure.

(2) In all other cases the Judge Advocate General may take one or more of the following actions as appropriate:

(a) Return the petition for compliance with the procedural requirements of paragraph 109e, MCM and section 0143 of this Manual.

(b) Deny the petition if relief is not warranted under the criteria set forth in paragraph 109d, MCM.

(c) Grant the petition if relief is warranted under the criteria set forth in paragraph 109d, MCM.

(d) Refer the petition to one or more officers for review and preparation of a recommendation for the Judge Advocate General. In the event such a referral is made, counsel for the Government and for the petitioner will be designated and a hearing with oral argument after submission of briefs may be permitted.

0144 APPLICATION FOR RELIEF UNDER ARTICLE 69, UCMJ, IN CASES WHICH HAVE BEEN FINALLY REVIEWED

a. *Statutory provisions.* Article 69, UCMJ, provides in pertinent part, "Notwithstanding section 876 of this title (article 76) the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused. When such a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before -

(1) October 1, 1983; or

(2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title [article 65(b)], the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time."

b. *Time Limitations.* An application for relief must be placed in military channels, if the applicant is on active duty, or be deposited in the mail, if the applicant is no longer on active duty, before 1 October 1983 or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority, or in a special court-martial case which requires action under Article 65(b), UCMJ, the officer exercising general court-martial jurisdiction, whichever is later, to be considered by the Judge Advocate General. An application filed after those time limits may be considered if the Judge Advocate General determines, in his sole discretion, that "good cause" for failure to file within the time limits has been established by the applicant.

c. *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant's commanding officer, and the command that convened the court, and the command that took supervisory authority action on the case. If the original record of trial is held by the supervisory authority, he shall forward it as an enclosure to his endorsement. This endorsement shall also include information and comment on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

d. *Contents of applications.* All applications for relief shall contain:

(1) Full name of the applicant;

(2) Social Security number and branch of service, if any;

(3) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;

(4) Address at time the application is forwarded;

(5) Date of trial;

(6) Place of trial;

(7) Command title of the organization at which the court-martial was convened (convening authority);

(8) Command title of the officer exercising general court-martial jurisdiction over the applicant at the time of trial (supervisory authority);

(9) Type of court-martial which convicted the applicant, and sentence adjudged;

(10) General grounds for relief which must be one or more of the following:

(a) Newly discovered evidence;

(b) Fraud on the court;

(c) Lack of jurisdiction over the accused or the offense;

(d) Error prejudicial to the substantial rights of the accused;

(11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.);

(12) Any other matter which the applicant desires to submit;

(13) Relief requested; and

(14) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in 0144b above; and

(15) If the application is signed by a person other than the applicant pursuant to section 0144d of this Manual, an explanation of the circumstances rendering the applicant incapable of making application.

The applicant's copy of the record of trial will *not* be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

e. *Signatures on applications.*

Unless incapable of making application himself, the applicant shall personally sign his application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by applicant's spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when he is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person

other than the applicant, the circumstances rendering the applicant incapable of making application shall be set forth in the application. (See item (15) to section 0144c).

0145 SET OFF OF INDEBTEDNESS OF A PERSON AGAINST HIS PAY

a. *Court-martial decisions.* When the United States has suffered loss of money or property through the offenses of selling or otherwise disposing of, or willfully damaging, or losing military property, willfully and wrongfully hazarding a vessel, larceny, wrongful appropriation, robbery, forgery, arson, or fraud for which persons, other than accountable officers as defined in NAVCOMPTMAN 041501-041503, have been convicted by court-martial, the amount of such loss consitutes an indebtedness to the United States which will be set off against the final pay and allowances due such persons at the time of dismissal, discharge, or release from active duty.

b. *Administrative determinations.* In addition, when the Government suffers a loss of money and competent authority has administratively determined that the loss occurred through the fraud, forgery, or other unlawful acts of such persons as described in subsection a above, the amount of such loss shall be setoff as described in subsection a. "Competent authority," as used herein, shall be the commanding officer of such persons and the administrative determination shall be made through an investigation pursuant to the JAG Manual and approved on review by a general court-martial authority.

c. *Army and Air Force property.* When the money or property involved belongs to the Army or the Air Force, and such service determines liability through the procedures provided by the authority of 37 U.S.C. §1007 and demands set off against the final pay and allowances of any naval service personnel, setoff shall be effected in accordance with subsection a above.

d. *Voluntary restitution.* Immediate recovery action may be instituted on the basis of a voluntary offer of the member to make restitution of all or part of any indebtedness to the Government. The voluntary offer constitutes assumption of pecuniary responsibility for the loss and, as such, is sufficient to authorize checkage of current pay, if required, to collect the amount of the indebtedness. See also 10 U.S.C. §6161 and SECNAVINST 7220.38 series concerning the possibility of remission or cancellation of an enlisted member's indebtedness. Nothing herein shall be construed as precluding set off against final pay in other cases when such action is directed by competent authority.

0146 AUTHORITY TO PRESCRIBE REGULATIONS RELATING TO THE DESIGNATION AND CHANGING OF PLACES OF CONFINEMENT

The Chief of Naval Personnel and the Commandant of the Marine Corps are authorized to issue joint regulations as required to appropriate authorities relating to the designation and the changing of places of confinement of naval prisoners (see BUPERSINST 1640.5 series). Convening authorities, officers exercising supervisory authority, and commanding officers operating correctional facilities are considered appropriate authorities within the meaning of this section. The Chief of Naval Personnel is further authorized to designate places of confinement when necessary, to change the designation, and to authorize the transfer of prisoners between naval places of confinement and to Federal penal or correctional institutions.

0147 APPREHENSION BY CIVILIAN AGENTS OF THE NAVAL INVESTIGATIVE SERVICE

Pursuant to the provisions of paragraph 19, MCM, and under the authority of Article 7(b), UCMJ, any civilian agent of the Naval Investigative Service, who is duly accredited by the Director, Naval Investigative Service, and who is engaged in conducting an investigation within the investigative jurisdiction of the Naval Investigative Service as established in departmental directives, which investigation has been duly requested by, or is at the direction of, competent U. S. Navy or U. S. Marine Corps authority, may apprehend, if necessary, persons subject to the UCMJ or to trial thereunder, upon reasonable belief that an offense has been committed and that the person apprehended committed it. A person so apprehended must be taken promptly before his commanding officer or other appropriate military authority. Such a civilian agent may apprehend a commissioned officer or a warrant officer only pursuant to specific orders of a commissioned officer except where such an apprehension is necessary to prevent disgrace to the service, the commission of a serious offense, or the escape of one who has committed a serious offense. Such a civilian agent, even though not conducting an investigation relating to the person apprehended, may also apprehend a person subject to the UCMJ upon observation of the commission of a felony or a misdemeanor amounting to a breach of the peace occurring in the agent's presence. A person so apprehended must be delivered promptly to his commanding officer or other appropriate military authority.

0148 SEARCH AND SEIZURE; FORMS

a. The Military Rules of Evidence authorize the "Secretary concerned" to implement additional requirements or limitations concerning certain of the Rules. In this regard:

(1) Rule 305(d)(2) – No implementation.

(2) Rule 312(g) – No implementation.

(3) Rule 315(d)(1) – No implementation.

(4) Rule 315(d)(2) – A "commander," as that term is defined in Rule 315(d)(1), may not delegate the authority to authorize searches to military judges of the Navy, Marine Corps, or any other armed force. Navy and Marine Corps military judges may not exercise any delegated authority to authorize searches from a "commander" of any armed force.

(5) Rule 315(d)(3) – No implementation.

(6) Rule 315(f)(2) – No implementation.

(7) Rule 315(h)(2) – No regulations further implementing Rule 315(h)(2) concerning inventories, are prescribed. No exceptions to Rule 315(h)(2) are authorized.

(8) Rule 317(c)(2) – See SECNAVINST 5520.2 series. No further implementation.

b. Appendices A-1-l and A-1-m contain suggested formats for recording information pertaining to authorization for searches (with instructions), and the granting of consent to search. These formats are designed as guides in processing problems which may arise in connection with cases involving searches and seizures. Use of these formats, even as guides, is not mandatory, but rests within the discretion of local commanders.

0149 INTERROGATION OF CRIMINAL SUSPECTS FORM

Appendix A-1-n contains a suggested format which may henceforth be utilized by investigative personnel in cases in which criminal suspects desire to waive their rights concerning self-incrimination, and to make statements. This format is designed as a guide and its use is not mandatory.

0150 COURT-MARTIAL CASE REPORT

The form NAVJAG 5813/2, Court-Martial Case Report (Rev. 1-73), is designed to serve as a statistical source for planning purposes and to afford the Judge Advocate General an early source of information regarding cases which may evoke public or Congressional interest. RSC JAG 5813-1. A Case Report will be submitted by all military judges of the Navy-Marine Corps Trial Judiciary. Supplies of NAVJAG Form 5813/2 (Rev. 1-73) are available in the Forms and Publications Segment of the Navy Supply System under Stock Number S/N 0105-LF-100-8161. A form containing sample entries is set forth in Appendix A-1-o.

0151 FURNISHING OF ADVICE AND COUNSEL TO ACCUSED PLACED IN PRETRIAL CONFINEMENT

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that when a person is placed in pretrial confinement immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee's right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

0152 RULES OF PRACTICE BEFORE COURTS-MARTIAL

All defense counsel, individual defense counsel (both military and civilian), and trial counsel will be governed in their courtroom conduct and in their relationships with each other and with the military judge by the Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial, set forth in appendix A-1-p.

0153 UTILIZATION AND INSTRUCTION OF BAILIFFS

A bailiff should be present at every trial by court-martial unless his presence is excused by the military judge. The Bailiff's Handbook, contained in appendix A-1-q, sets forth the principal duties of bailiffs and will be utilized by trial counsel for instructing the bailiff, in consonance with the directions of the military judge.

0154 COURT-MARTIAL FORMS

a. *List*. The forms listed below are used in courts-martial by the naval service:

SF 1156	Public Voucher for Fees and Mileage of Witnesses
SF 1157	Claim for Fees and Mileage of Witness
DD 453	Subpoena for Civilian Witness
DD 454	Warrant of Attachment
DD 455	Report of Proceedings to Vacate Suspension
DD 456	Interrogatories and Depositions
DD 457	Investigating Officer's Report
DD 458	Charge Sheet
DD 490	Verbatim Record of Trial
DD 491	Summarized Record of Trial
DD 493	Extract of Military Records of Previous Convictions
DD 494	Court-Martial Data Sheet (Optional)
DD 1722	Request for Trial Before Military Judge Alone
NAVJAG	5800/9 Criminal Activity, Disciplinary Infractions and Court-Martial Report (Rev. 11-77) and 5800/9A Supplemental Report (Rev. 11-77)
NAVJAG	5813/1 Court-Martial Data (Rev. 11-72)
NAVJAG	5813/2 Court-Martial Case Report (Rev. 1-73)

b. *How to obtain forms.* The above-designated forms are available from the Forms and Publications Segment of the Navy Supply System as cognizance symbol "I" material and may be obtain in accordance with the instructions contained in Navy Stock List of Forms and Publications, NAVSUP Publication 2002. Marine Corps activities will requisition forms in accordance with instructions contained in Chapter 22 of Marine Corps Unified Material Management System Manual, Marine Corps Order P-4400.84.

c. *Forms prescribed by MCM.* Where forms are prescribed by the Manual for Courts-Martial, but are not immediately available, convening authorities may improvise as necessary, using the MCM and appendices thereto as guides.

0155 APPLICATION UNDER ARTICLE 74(b), UCMJ, FOR THE SUBSTITUTION OF AN ADMINISTRATIVE FORM OF DISCHARGE FOR A PUNITIVE DISCHARGE OR DISMISSAL

a. *Statutory provisions.* Article 74(b), UCMJ, provides that the "Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial."

b. *Submission procedures.* Applications for relief will be submitted to the Secretary using the following address: Secretary of the Navy (Judge Advocate General, Code 20), 200 Stovall Street, Alexandria, Virginia 22332. Except in unusual circumstances, applications will not normally be approved if received within five (5) years of the execution of the punitive discharge or dismissal, or within five (5) years of disapproval of a prior request under Article 74(b), UCMJ.

c. *Contents of the application.* All applications shall contain:

(1) Full name of the applicant;

(2) Social Security Number, service number (if different), and branch of service of the applicant;

(3) Present age and date of birth of the applicant;

(4) Present residence of the applicant;

(5) Date and place of the trial, and type of court-martial which resulted in the punitive discharge or dismissal;

(6) Command title of the convening authority of the court-martial which resulted in the punitive discharge or dismissal;

(7) Offense(s) of which the applicant was convicted at, and finally approved sentence resulting from, the trial which resulted in the punitive discharge or dismissal;

(8) Date the punitive discharge or dismissal was executed;

(9) Applicant's present marital status, and number and ages of dependents, if any;

(10) Applicant's civilian criminal record (arrest(s) with disposition, and conviction(s)), both prior and subsequent to the court-martial which resulted in the punitive discharge or dismissal;

(11) Applicant's entire court-martial record (offense(s) of which convicted and finally approved sentence(s)), and nonjudicial punishment record (including offense(s) and punishment(s) awarded);

(12) Any military administrative discharge proceedings (circumstances and disposition) initiated against the applicant;

(13) Applicant's full employment record since the punitive discharge or dismissal was executed;

(14) The specific type and character of administrative discharge requested pursuant to Article 74(b), UCMJ (a more favorable administrative discharge than that requested will not be approved);

(15) At least three but not more than six character affidavits. (The character affidavits must be notarized, must indicate the relationship of the affiant to the applicant, and must include the address of the affiant as well as specific reasons why the affiant believes the applicant to be of good character. The affidavits should discuss the applicant's character primarily as reflected in the civilian community subsequent to the punitive discharge or dismissal which is the subject of the application);

(16) Any matters, other than character affidavits, supporting the considerations described in section 0155c(17), below;

(17) A statement by the applicant, setting forth the specific considerations which the applicant believes constitute "good cause", so as to warrant the substitution of an administrative form of discharge for the punitive discharge or dismissal previously executed. (In this connection, Article 74(b) does not provide another regular or extraordinary procedure for the review of a court-martial. Questions of guilt or innocence, or legal issues attendant to the court-martial which resulted in the punitive discharge or dismissal, are neither relevant nor appropriate for consideration under Article 74(b). As used in the

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statute, "good cause" was envisioned by Congress to encompass only a Secretarial exercise of clemency and ultimate control of sentence uniformity. Accordingly, in determining what constitutes "good cause" under Article 74(b), the primary Secretarial concern will be with the applicant's record in the civilian community subsequent to his or her punitive separation. Material submitted by the Article 74(b) applicant should be consistent with the foregoing).

d. *Signature on application.* Unless incapable of making application himself or herself, the applicant shall personally sign the application, under oath, before a notary or other official authorized to administer oaths. If the applicant is incapable of executing the application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian or other person recognized as a personal representative by the law of the applicant's domicile. One is considered incapable of executing an application for purposes of this section only when the applicant is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person other than the applicant, the circumstances rendering the applicant incapable of making sworn application shall be set forth in the application, with appropriate documentation.

e. *Privacy Act Statement.* Disclosure of personal information requested by subparagraph 0155c is voluntary; however, failure to accurately provide all requested information may result in the application being denied because of inadequate documentation of good cause.

Chapter II

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0201 GENERAL

a. *Definitions*

(1) An "administrative fact-finding body" is any one of a number of administrative, as distinguished from judicial, entities, including single individuals functioning as such, which is employed to collect and record information respecting some subject.

(2) A "JAG Manual Investigation" is an administrative fact-finding body constituted under any portion of the regulations set forth in chapters II through X of this manual. RCS JAG 5830-1.

b. *Functions*

(1) The primary function of all administrative fact-finding bodies constituted under these regulations is to search oût, develop, assemble, analyze, and record all available information relative to the matter under investigation. Such bodies are required to formulate clearly expressed and consistent findings of fact.

(2) The collateral function of a court of inquiry and, when expressly so directed by the convening authority, a formal fact-finding body, is to afford a hearing, of the nature and scope prescribed, to any person whose conduct or performance of duty is subject to inquiry or who has a direct interest in the subject of the inquiry.

c. *Purpose.* The primary purpose of all administrative fact-finding bodies constituted under these regulations is to provide convening and reviewing authorities with adequate information upon which to base decisions in the matters involved. These bodies are administrative and not judicial; their reports are, therefore, purely advisory; their opinions, when expressed, do not constitute final determinations or legal judgments; and their recommendations, when made, are not binding upon convening or reviewing authorities.

d. *Privacy Act compliance.* When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e) (3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a.

0202 NEED AND IMPORTANCE

a. *General.* The collection and preservation of important information by fact-finding bodies convened under these regulations are vitally necessary and useful in a great many respects. Some of the purposes served are described in the following subsections.

b. *Efficient command or administration.* Fact-finding reports may provide convening and reviewing authorities with information essential to the efficient operation of the fleet, its readiness, or improved administration of the Department of the Navy. The reports are also routed to interested bureaus, systems commands and offices of the Navy Department. The reports thus may become the basis for various actions of importance, such as:

(1) Reevaluation of operational practices or standards.

(2) Redesign and improvement of material or equipment.

(3) Modification or adoption of instructions, regulations, and procedures.

(4) Timely and accurate reply to inquiries concerning incidents of legitimate public interest, with accompanying improved public relations.

c. *Proper disposition of claims for or against the Government.* See chapters XX through XXIV.

d. *Redress of injuries to property.* See Article 139, UCMJ and chapter X.

e. *Administrative determinations respecting personnel and former personnel.* Reports of fact-finding bodies provide the basis for making administrative determinations respecting personnel and former personnel. Examples of such determinations within the service are: Whether the time required for treatment of an illness or injury must be "made up" after what should otherwise have been the end of an enlistment or period of obligated active service because such illness or injury is held to have been due to the individual's own misconduct; whether an illness or injury is the result of "intentional misconduct or willful neglect" within the meaning of disability separation statutes; whether an illness or injury was incurred in the line of duty while *employed* on inactive duty training or active duty for training; whether, and in what degree any commendatory or adverse action respecting an individual should be taken. Examples of administrative determinations outside the service are entitlement of dependents of deceased personnel to dependency and indemnity compensation, based upon whether the evidence of record (not findings or opinions) indicates the death to have been due to the individual's willful misconduct; and whether personnel accountable for funds or property may be eligible for relief from personal liability for losses, based upon affirmative showings of record that there was no negligence of commission or omission on the part of the accountable persons which may have caused or contributed to the loss. Rights as a party (see chapter III) to formal fact-finding proceedings are accorded persons to afford them an opportunity to assure that all matter favorable to them is set forth on the record to be available in connection with any future administrative determination.

0203 INVESTIGATIONS UNDER SPECIAL REGULATIONS

a. *General.* In addition to the investigations required by these regulations, various other investigative efforts are required by other regulations. A single incident requiring investigation may require only an investigation in accordance with these regulations or may require only investigation under other regulations not included herein. On the other hand, an incident may require investigation under both these regulations and other regulations, in which case, dependent upon the other regulations involved, separate proceedings may be required or combined proceedings may be permissible. Care must be exercised in determining what investigations may be required and to what extent these investigations may be combined. The following broad guidelines are set forth to assist in making this determination.

b. *Single-purpose investigations.* If the only requirement is for an investigation under regulations not included herein, then those regulations alone should govern and an administrative fact-finding body under these regulations should not be convened. For example, if there is no other basis for investigation than prospective disciplinary action, a preliminary inquiry under paragraphs 32b and 33a, MCM, or a pretrial investigation under Article 32, UCMJ and paragraph 34, MCM should be conducted without recourse to the proceedings of a fact-finding body under these regulations.

c. *Special situations wherein JAG Manual investigation contraindicated or to be conducted and report prepared and routed separately and apart from other required procedures.* A JAG Manual investigation should normally not proceed at the same time as a law-enforcement type of investigation by the Federal Bureau of Investigation, Naval Investigative Service, local police department, command investigative unit or armed services police unit. This will avoid interference with law-enforcement type investigations.

d. *Noncombinable investigations.* An administrative fact-finding body under these regulations may be required and ordered in addition to, but not in lieu of, certain inquiries, the proceedings of which are controlled by other regulations. For example:

(1) Situation reports prescribed by articles 0739 and 0743 U.S. Navy Regulations, 1973, or other situation reports prescribed by bureau manuals or Departmental regulations.

(2) Investigations conducted by the Naval Investigative Service pursuant to SECNAV Instruction 5520.3 series. See 0212.

(3) Investigations conducted by an inspector general or his assistants.

(4) Hearings conducted pursuant to the Disability Evaluation Manual (SECNAVINST 1850.4).

(5) Investigation of aircraft accidents pursuant to OPNAVINST 3750.6 series.

(6) Administrative letter reports respecting security violations prescribed by OPNAVINST 5510.1 series.

(7) Reports of accidental injury pursuant to OPNAVINST 5102.1 series.

0204 TYPES OF ADMINISTRATIVE FACT-FINDING BODIES

a. *General.* On the basis of membership, there are three types of administrative fact-finding bodies that may be constituted under these regulations: courts of inquiry, boards of investigation, and single individual investigations. On the basis of procedure, there are two types of administrative fact-finding bodies: formal and informal. A *formal* fact-finding body is one which utilizes a formal hearing procedure, ordinarily takes all testimony under oath, often maintains a verbatim record of all evidence, and may be authorized to designate parties. On the other hand, an *informal* fact-finding body normally employs the preliminary inquiry method of gathering evidence, using telephone inquiries, correspondence, and informal interviews to assemble the required information conveniently and expeditiously; it shall not be authorized to designate parties.

b. *Courts of inquiry.* The principal distinguishing features of a court of inquiry are as follows:

(1) It consists of at least three commissioned officers as members and a commissioned officer as counsel for the court.

(2) It is convened by a written appointing order.

(3) It must take all testimony under oath and record all proceedings verbatim regardless of whether such is directed in the appointing order.

(4) Persons subject to the UCMJ whose conduct is subject to inquiry must be designated parties.

(5) Persons subject to the UCMJ or employed by the Department of Defense who have a direct interest in the subject of inquiry must be designated parties upon their request to the court.

(6) It possesses the power to subpoena civilian witnesses (see Article 47 UCMJ which provides for prosecution in U.S. district court for failing to appear, to testify, or to produce evidence).

c. *Formal fact-finding bodies.* The principal distinguishing features of a formal fact-finding body (other than a court of inquiry) are:

(1) It consists of one or more commissioned officers as member or members.

(2) It is convened by a written appointing order.

(3) The appointing order may direct that the body take all testimony under oath and/or record all proceedings verbatim.

(4) It utilizes a formal hearing procedure.

(5) Persons whose conduct is subject to inquiry or who have a direct interest in the subject of the inquiry may not be designated parties unless such designation is expressly authorized in the appointing order.

(6) It does not possess the power to subpoena witnesses (unless convened under Article 139, UCMJ and chapter X of this Manual).

d. *Informal fact-finding bodies.* The principal distinguishing features of an informal fact-finding body are:

(1) It may consist of one or more officers, senior enlisted persons, or civilian employees of the Department of the Navy as member or members.

(2) It may be convened orally or in writing.

(3) It is ordinarily not directed to take testimony under oath or to record testimony verbatim.

(4) It utilizes informal procedures in collecting evidence.

(5) It shall not designate any person as a party to the investigation.

(6) It does not possess the power to subpoena witnesses.

0205 SELECTION OF TYPE AND DESIGNATION OF PARTIES

a. *Selection of type.* The several types of fact-finding bodies described in the preceding section have been prescribed to accommodate the variety of situations which must be investigated in the naval service. Thus, the type of fact-finding body to be ordered should be determined in large measure by the powers which the fact-finding body will require, the paramount purposes of the inquiry, the relative seriousness of the subject of the inquiry, the probable complexity of the factual issues involved, and other such factors. Much must be left to the judgment and discretion of officers in command. In general, however, the following guidelines should be considered in the selection of the type of fact-finding body to be employed. Where it appears that the incident under investigation involves substantial loss of life or where significant international or legal consequences may be involved, either a court of inquiry or a formal board of investigation, depending generally upon whether the power to subpoena civilian witnesses is involved, should be considered. Other serious incidents requiring investigation, such as grounding of a ship, collision, flooding, and other major afloat casualties, particularly if significant loss of life resulted, should ordinarily be investigated by a formal board or formal single officer investigation, but in such cases the requirement of a verbatim record need not invariably be imposed. In other less serious cases, an informal fact-finding body will ordinarily be adequate. In any case in which there is doubt as to the type of fact-finding body which should be ordered, the matter may be referred to a superior in command for determination.

b. *Designation of parties.* In connection with the selection of the type of fact-finding body to be convened, the desirability of designating parties and affording the persons so designated all of the rights of a party should be considered. In general, the designation of parties before JAG Manual investigations is unnecessary because other regulations, which provide for further judicial or administrative proceedings before adverse action may be taken against an individual (see section 0304g), contain adequate safeguards to protect the rights of persons so involved. If, however, the subject matter of the inquiry involves such disputed issues of fact that a risk of substantial injustice to a person or persons would exist if he or they were not afforded the rights of a party during the investigation, a court of inquiry or a formal fact-finding body which is expressly authorized to designate parties should be ordered. In other cases, subject to the considerations set forth in the preceding subsection, a formal fact-finding body which is not authorized to designate parties or an informal fact-finding body will suffice.

0206 CONVENING AUTHORITY–POWER TO ORDER

a. *Courts of inquiry.* Any person authorized to convene a general court-martial, or any other person designated by the Secretary of the Navy for that purpose, may convene a court of inquiry (Article 135, UCMJ).

b. *Other fact-finding bodies.* Any officer in command may order a board of investigation or a one-man investigation, either formal or informal. The appointing order of a fact-finding body other than a court of inquiry may be issued or subscribed by an officer who holds a delegation of authority for such purpose from the convening authority. For the purposes of these regulations, "officer in command" means an officer authorized to convene any type of court-martial under Articles 22, 23, or 24, UCMJ, or authorized to impose disciplinary punishment under Article 15, UCMJ, including officers in charge. However, only a commanding officer empowered to convene a special court-martial, or superior authority, may order an investigation which involves redress of injury under Article 139, UCMJ.

0207 CONVENING AUTHORITY–RESPONSIBILITY TO ORDER

a. *General considerations.* The officer in command of the unit or activity concerned is primarily responsible for initiating an investigation into an incident arising in his command. If the command is an afloat command, the investigation of incidents occurring ashore may be conducted by another appropriate command when the afloat command so requests and certifies that conduct of the investigation by the afloat command would not be feasible. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, when there is doubt as to who should convene the fact-finding body, the matter shall be referred to the area coordinator, or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, who shall resolve the issue and ensure that any required investigation is conducted.

b. *Incidents far removed from location of command.* Activities required to make investigations under these regulations are often geographically far removed from the scene of incidents for which they have investigating responsibility. A typical situation of this kind is one where personnel are injured or die under doubtful circumstances at a place distant from the activity to which they are assigned (*see* section 0806) or where mobile activities are required to move from the locality of an incident before a thorough investigation can be completed. In such cases, commanding officers and officers in charge may refer the incident which is subject to investigation to another officer qualified to order the appropriate fact-finding body if the investigation can be more expeditiously accomplished by a different activity. In such situations in the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, a request to conduct an appropriate investigation should be made to the area coordinator, or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, in whose geographic area of responsibility the incident occurred. The request shall contain all available information such as: time, place, and nature of the incident; full names, grades, service numbers, and leave status of naval personnel involved; names and addresses of all known witnesses; all available evidence and statements; and copies of all reports of the incident made to the Navy Department or other superior authority under existing regulations.

c. *Incidents involving injuries.* In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, when a member of the naval service is injuried and is admitted to a naval hospital, the commanding officer of the hospital shall, if no investigation is being made of the incident, promptly report the matter to the area coordinator, or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, in whose geographic area of responsibility the incident occurred. Similarly, if a dependent of a member of the uniformed services is injured under circumstances involving a third person, and is furnished hospital, medical, surgical, or dental care at government expense, the agency, facility, or individual who provided such care shall promptly notify the cognizant action JAG designee (*see* section 2401c) so that he may ensure that, if required, the necessary investigation is made.

d. *Incidents involving more than one command.* Whenever more than one activity is involved in an incident requiring investigation, a single investigation should be conducted if practicable. Such an investigation may be convened by the officer in command of any of the activities concerned and all activities concerned shall cooperate in the expeditious conduct of the investigation. If any difficulty or dispute arises in the convening of such an investigation, the matter should be referred to the common superior of all officers involved. If there is reason to believe that the conduct or performance of duty of the officer in command of any activity involved in the incident may be subject to inquiry, the common superior of all the officers involved should convene the investigation. For example, when a collision occurs between ships of different type commands, a single investigation should be convened by the command superior in the operational chain of command. Whenever a single investigation of an incident involving more than one activity is conducted, all activities involved shall provide all available information to the activity conducting the investigation.

e. *Incidents involving Marine Corps personnel.* If a member of the Marine Corps is involved in an incident requiring the investigation while in an area which is geographically far removed from the parent command, the individual's commanding officer shall request investigative assistance from a Marine commander authorized to convene general courts-martial in the immediate area in which the incident occurred, or in the absence of such an officer, from the Commanding General, 4th Marine Division.

0208 DISSOLUTION

A fact-finding body is considered dissolved when its duties have been completed, and no formal order to that effect is necessary.

0209 THE RECORD OF PROCEEDINGS—GENERALLY

a. *Content.* The record of proceedings or the investigative report must be made as complete as possible to ensure preservation of evidence relating to the incident investigated and to give authorities in the Department of the Navy an adequate basis on which to take action. Illustrative facts which should be established and supported by enclosures in particular situations are outlined in chapter IX. These suggestions, however, are not all inclusive. Any information that will aid understanding or help reviewers weigh the evidence should be included. Except for facts of which a court may take judicial notice (*see* paragraph 147, MCM), an administrative fact-finding body should not arrive at findings of fact which are not supportable by evidentiary enclosures or personal observation.

b. *Copies.* Each copy of the record of proceedings or investigative report must be complete within itself and should contain all enclosures and exhibits. Sufficient complete copies should be prepared to fulfill the requirements of section 0211c.

c. *Classification.* Because of the wide circulation in the Department of the Navy of records of some investigations, classified information should be omitted unless inclusion is essential. Information inherently not of a classified nature, although derived from classified messages, shall be paraphrased without identifying the original message by date-time group. A record or report containing information so derived need not be classified for this inclusion alone, provided that the information paraphrased is not classified. When classified matter is necessarily included in the record of proceedings or an investigative report, the record or report shall be assigned the classification of the highest subject matter contained therein. Encrypted versions of messages shall not be included in or attached to records of proceedings or investigative reports in which the content, substance, or purport of such message is divulged, regardless of the classification given the record or report. See Department of the Navy Security Manual for Classified Information, OPNAVINST 5510.1 series.

d. *Privacy Act compliance*. When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C.§ 552a) in accordance with section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

0210 THE RECORD OF PROCEEDINGS–ACTION BY CONVENING AND REVIEWING AUTHORITIES

a. *Intermediate routing*

(1) The record of proceedings or report of a fact-finding body shall be forwarded to and reviewed by the convening authority and appropriate superior authorities in the chain of command. No precise rule can be laid down as to the identity of appropriate superior authorities in the chain of command. The subject matter of the inquiry and the facts found will dictate the routing of the record or report for review. The record or report should be made available to all superior commanders who have a direct official interest in the recorded facts.

(2) In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, area coordinators, and subordinate commanders authorized to convene general courts-martial and designated by the area coordinator for this purpose, are considered to have a direct official interest in records or reports of investigations conducted by shore activities within the area of their cognizance and relating to a subject matter affecting their area coordination, command responsibility, or claims adjudicating authority, and, unless they direct otherwise, should be included as reviewing authorities whether or not in the chain of command.

(3) All flag and general officers in command may publish categories of subject matter of investigations which are of direct official interest to them and to their subordinates, and may direct that investigations involving other categories of subject matter be given exceptional intermediate routing. For example, a type commander might direct that investigations involving solely line of duty or misconduct determinations be routed directly to him, by-passing all echelons of authority between him and the convening authorities.

b. *Review and forwarding*. The convening authority and each field authority to whom the record of proceedings or report is routed shall transmit it by endorsement which will generally effect one of the following actions:

(1) Forward the record or report commenting that it contains no matter of direct official interest to the authority and that it is therefore transmitted without comment or recommendation.

(2) Return the record or report for further inquiry, noting any incomplete, ambiguous, or erroneous action of the fact-finding body or a prior reviewing authority.

(3) Return the record or report for further corrective action, stating in detail the inadequacy or incompleteness noted.

NOTE: The authority who convened the fact-finding body has the primary responsibility to ensure that the investigation record is in compliance with the Privacy Act of 1974 before the record is forwarded. See section 0308. The officer exercising general court-martial jurisdiction who reviews the JAG Manual investigation record has the responsibility to review the record for compliance with the Privacy Act of 1974, and if the investigation fails to comply, he shall return it to the convening authority for remedial action prior to forwarding it to the Judge Advocate General.

(4) Forward the record or report setting forth appropriate comments and recording approval or disapproval, in whole or in part, of the proceedings, findings, opinions, and recommendations. For the benefit of subsequent reviewing authorities, each shall state clearly what action he has taken, or will take, and/or his recommendations as a result of matters contained in the record. If the investigative body is also conducting a claims investigation, the reviewing authority's action will be governed by the applicable provisions of chapters XX through XXIV of this Manual; if the investigating body is also acting as a

board for redress of injuries to property, the reviewing authority's action shall be governed by chapter X of this Manual; or if the investigating body is inquiring into the loss, compromise, or subjection to compromise of classified information, the reviewing authority's action will be governed by paragraphs 4-102 and 4-104 of the Department of the Navy Security Manual for Classified Information, OPNAVINST 5510.1 Series.

c. *Disciplinary action.* Except where an individual has been fully accorded the rights of a party before a court of inquiry or a formal fact-finding body, nonjudicial punishment may not be predicated exclusively upon the proceedings of a fact-finding body (*see* section 0101d), nor may the record of proceedings or report of such fact-finding body be used in lieu of a formal pre-trial investigation as authorized by Article 32 (c), UCMJ. Nevertheless, whenever punitive or nonpunitive disciplinary action is contemplated, initiated, or taken respecting any person as the result of the incident which was the subject of inquiry, such action (its specific nature, including current status) shall be noted in the endorsement of the convening or reviewing authority. Punitive letters of censure or copies or recommended drafts thereof shall be included in an investigative report as enclosures. Nonpunitive letters or copies, or recommended drafts thereof, are private in nature and shall not be included as enclosures in an investigative report, but shall be separately forwarded to the appropriate commander for issuance.

d. *Additional information.* Each reviewing authority's action will include any information known or reasonably ascertainable at the time of the review concerning actions taken or being taken in the case but not contained in the record or previous endorsements.

0211 THE RECORD OF PROCEEDINGS AND COPIES–DISPOSITION

a. *Routing.* Except as indicated below, the complete original record or report of every JAG Manual investigation shall be routed to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332, in accordance with the intermediate routing provided in section 0210. Except when they have a direct official interest in the recorded facts and should be included as a via addressee, the routing of the record to other commands, bureaus and offices of the Navy Department will be accomplished by the Judge Advocate General.

b. *Special Routing*

(1) Records or reports of investigations which involve Marine Corps personnel and relate to fraud, waste, and related improprieties within the Marine Corps, shortages of public property or public funds, or incidents of a sensitive nature which result or may result in extensive media exposure shall be forwarded to the Judge Advocate General via the Commandant of the Marine Corps.

(2) Records or reports of death investigations conducted pursuant to this Manual in which the adequacy of medical care is reasonably in issue shall be forwarded to the Judge Advocate General via the Naval Inspector General with an advance copy to the Judge Advocate General.

(3) Records or reports of investigations into the loss of Government property entrusted to an accountable officer shall be routed as prescribed in section 0909f.

(4) Records or reports of investigations which involve lost, missing, damaged, or destroyed property of the Marine Corps shall be routed to the Commandant of the Marine Corps as prescribed in paragraph 4022, Volume I, Marine Corps Supply Manual.

(5) Records or reports of investigations which involved loss, compromise, or subjection to compromise of classified information shall be routed in accordance with paragraph 6-104 of OPNAVINST 5510.1 series. These investigations are not sent to the Judge Advocate General.

(6) If a record of investigation is to be used as a pretrial investigation pursuant to Article 32(c), UCMJ, and the original is desired in connection with a trial by general court-martial, the original shall be retained in the field for such purpose and a complete certified copy shall be forwarded to the Judge Advocate General via appropriate authorities.

(7) If a record or report of investigation involves a claims matter or redress of injuries to property under Article 139, UCMJ, see chapter X and chapters XX through XXIV as appropriate.

c. *Routing of copies*

(1) One complete copy of the record or report of investigation shall be forwarded with the original for each intermediate reviewing authority and an additional copy shall be forwarded for the Judge Advocate General. Additionally, if a shore command

conducted the investigation upon request of an afloat command, as provided in sections 0207a and 0806, information copies of the investigation record or report shall be forwarded to interested afloat commands. With respect to the right of a party to the investigation to receive a copy, see section 0304i.

(2) In serious cases and in cases in which the convening authority considers that the Navy Department should have advance information, he shall forward an advance copy to the Judge Advocate General. Additionally, if the record or report of investigation involves a possible admiralty claim, an advance copy shall be forwarded as soon as possible to the Judge Advocate General (Admiralty Division). Respecting records or reports of investigation which may involve Medical Care Recovery Act claims, see section 2404c.

(3) U.S. Navy convening authorities shall, when security classification permits, forward an advance copy of the record or report of investigation as soon as practicable in cases involving inquiry into material damage to a ship, submarine, or Government property (except aircraft) to: Commander, Naval Safety Center, Naval Air Station, Norfolk, Virginia 23511. U.S. Navy commanders subsequently reviewing such record or report shall forward advance copies of their endorsements as above. In cases of aircraft accidents, advance copies of investigations and endorsements thereon will be forwarded to Commander, Naval Safety Center only upon his specific request.

(4) In cases involving postal losses or offenses, an advance copy of the record or report of investigation shall be forwarded by the convening authority to the Chief of Naval Operations (Postal Affairs Branch)/Commandant of the Marine Corps (Postal Affairs Branch). See paragraph 6202, U.S. Navy Postal Instructions. OPNAVINST 5112.1 series.

(5) In cases involving death or injury of personnel, the original will be forwarded with sufficient copies that the Judge Advocate General will receive the original and three copies.

0212 INVESTIGATIONS BY NAVAL INVESTIGATIVE SERVICE

a. *General.* The investigative jurisdiction and responsibilities of the Naval Investigative Service (NIS) and the field components thereof are set forth in SECNAVINST 5520.3 series. Officers in command are cautioned to comply meticulously with the provisions and spirit of that instruction. Matters pertaining to espionage, sabotage, subversive activities, fraud against the Government, and major violations of the UCMJ are included within the jurisdiction of NIS. Where the investigative service of NIS is utilized, the officer in command shall take appropriate measures to preserve evidence and to ensure that any other phases of investigation do not compromise or otherwise impede the investigative activities of NIS. In the event the officer in command deems it necessary to proceed with inquiry by a fact-finding body prior to the completion of the investigative phase by NIS, he shall first communicate with the local NIS office and establish coordination of the investigative effort. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, if the NIS office objects to the initiation of the inquiry by a fact-finding body, the matter should be referred for resolution to the appropriate area coordinator or subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose.

b. *Polygraph examinations.* DoD Directive 5210.48 of 6 October 1975, prohibits the inclusion in JAG Manual Investigations of polygraph examination reports or the results thereof. If any polygraph report or its results appear to be necessary or relevant to an informed decision by any reviewing authority for law enforcement or security purposes, an appropriate cross-reference notation should be made in the investigative report showing its availability. Polygraph examinations which are relevant to Naval investigations are normally conducted by NIS and the reports and results thereof are retained by that organization.

c. *Naval Investigative Service Reports of Investigation (ROI).* ROI should not be included in records of JAG Manual investigations. NIS investigations consist of the ROI (the narrative summary portion) and enclosures. Unless a local NISRA indicates to the contrary, clearance is not required for the inclusion of the enclosures to the ROI in a JAG Manual investigative report. If any ROI appears to be necessary or relevant to an informed decision by any reviewing authority with respect to the JAG Manual investigation, an appropriate cross-reference notation should be made in the investigative report indicating its availability.

0213 PRELIMINARY INVESTIGATION OF MAJOR INCIDENTS

a. *General.* The investigation of major incidents is sometimes complicated by the premature appointment of a court of inquiry or other formal investigative body. Without ascertaining the sequence of events and which witnesses can give enlightening testimony, the proceedings are made longer and more difficult as the result of lack of preparation prior to formal hearings. The purpose of all investigative proceedings is to inform authorities of the Department of the Navy fully and concisely as to the incident, its causes, and the responsibility therefor.

b. *Suggested procedure.* In major incidents it may be advisable to order immediately an informal one-officer investigation or informal board of investigation to ascertain the seriousness of the incident, to interview all witnesses, and to prepare a summary of their testimony. The convening authority may direct in his appointing order (oral or written) that the investigative body submit an interim oral report by a specified date. At the time of the oral report, the informal investigation may be terminated and the investigative effort directed into a court of inquiry or other formal investigation. Summaries of testimony or evidence developed in the informal investigation may be used as an aid by the later investigative body. Inasmuch as all courts of inquiry and most formal boards of investigation directed to inquire into major or complicated incidents have appointed counsel, consideration should be given to detailing the officer who conducted the informal investigation to assist counsel for the court or board.

c. *Function.* It is not the function of such preliminary investigation to fix responsibility for the incident or event. Its duties are to obtain statements of witnesses and to inform the convening authority as to the identity of the witnesses and the extent to which they can testify to pertinent facts.

0214 AUTHORITY TO ADMINISTER OATHS

A person on active duty appointed to perform investigative functions or to serve as counsel for an administrative fact-finding body within the meaning of these regulations is empowered to administer oaths in the performance of his duties. See Article 136, UCMJ.

Chapter III

PARTIES AND WITNESSES

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0301 PARTIES–DEFINITIONS

a. *Party.* A "party" is an individual who has properly been designated as such in connection with a court of inquiry or a formal fact-finding body.

b. *Subject to inquiry.* A person's conduct or performance of duty is "subject to inquiry" when the person is involved in the incident or event under investigation in such a way that disciplinary action may follow, that his rights or privileges may be adversely affected, or that his personal reputation or professional standing may be jeopardized.

c. *Direct interest.* A person has a "direct interest" in the subject of inquiry:

(1) When the findings, opinions, or recommendations of the fact-finding body may, in view of his relation to the incident or circumstances under investigation, reflect questionable or unsatisfactory conduct or performance of duty; or

(2) When the findings, opinions, or recommendations may relate to a matter over which the person has a duty or right to exercise official control.

0302 DESIGNATION OF PARTIES

a. *Courts of inquiry*

(1) Any person subject to the UCMJ whose conduct or performance of duty is subject to inquiry *shall* be designated a party before a court of inquiry.

(2) Any person subject to the UCMJ or employed by the Department of Defense who has a direct interest in the subject of inquiry *shall,* upon his request to the court or convening authority, be designated a party before a court of inquiry.

(3) Any member of the Naval or Marine Corps Reserve not subject to the UCMJ by virtue of his status whose conduct or performance of duty is subject to inquiry *may,* upon his request to the court or convening authority, be designated a party before a court of inquiry.

(4) No other person may be designated as a party unless expressly authorized by the Secretary of the Navy (Judge Advocate General).

b. *Formal fact-finding bodies*

(1) When authorized by the convening authority, any member of the naval service subject to the UCMJ whose conduct or performance of duty is subject to inquiry may be designated a party before a formal fact-finding body constituted under these regulations.

(2) When authorized by the convening authority, any member of an armed force other than the Navy and Marine Corps subject to the UCMJ; any person employed by the Department of Defense; or any member of the Navy or Marine Corps Reserve not subject to the UCMJ by virtue of his status, whose conduct or performance of duty is subject to inquiry may, upon request to the fact-finding body, be designated a party before a formal fact-finding body constituted under these regulations.

(3) No other person may be designated as a party unless expressly authorized by the Secretary of the Navy (Judge Advocate General).

c. *Informal fact-finding bodies.* No person may be designated as a party before informal fact-finding bodies constituted under these regulations.

d. *Who may designate.* Parties may be designated by the convening authority of a court of inquiry or formal fact-finding body, by any court of inquiry, or by a formal fact-finding body when expressly authorized by the convening authority, subject to the following considerations:

(1) When parties are to be designated, and it is apparent at the time of the issuance of the appointing order that a person or persons must or should be designated, the convening authority should include such designation in the appointing order. His power to designate continues during the entire proceedings before a court of inquiry or formal fact-finding body.

(2) If at any time during the course of an investigation by a court of inquiry or by a formal fact-finding body authorized to designate parties it appears to the court or body that any person not previously designated should be so designated, that person shall or may (see section 0302a and b) be informed of that conclusion, be designated a party, and be informed of and accorded his rights as such.

c. *Effect of designation.* The purpose and effect of designating an individual a party before a fact-finding body is to afford him a hearing respecting possibly adverse information concerning his conduct or performance of duty or relating to a matter over which he has a duty or right to exercise official control. The majority of investigations, although inquiring to some degree into the conduct or performance of duty of persons, result in relatively few instances in which adverse action is taken without separate administrative or judicial proceedings. The separate hearings in such cases are much more efficient and frequently are fairer to the person involved. Accordingly, as provided in section 0205b, it is generally undesirable to designate parties to investigations unless the subject matter of the inquiry involves such disputed issues of fact that a risk of substantial injustice to the person would exist if he were not afforded the rights of a party during the investigation.

0303 CHANGE IN STATUS OF A PARTY

If it no longer appears that a person previously designated as a party is involved in a material degree in the matter under investigation, his designation as a party may be withdrawn by the court of inquiry or formal fact-finding body upon application of that party, or upon the court or fact-finding body's own initiative.

0304 RIGHTS OF A PARTY

a. *General.* A person duly designated a party before a fact-finding body shall be advised of and accorded the following rights:

(1) To be given due notice of such designation.

(2) To be present during the proceedings, but not when the investigation is cleared for deliberations.

(3) To be represented by counsel. See subsection b below.

(4) To examine and to object to the introduction of physical and documentary evidence and written statements.

(5) To object to the testimony of witnesses and to cross-examine witnesses other than his own.

(6) To introduce evidence.

(7) To testify as a witness.

(8) To refuse to incriminate himself; and, if accused or suspected of an offense, to be informed of the nature of the accusation and advised that he does not have to make any statement regarding the offense of which he is accused or suspected; and that any statement made by him may be used as evidence against him in a trial by court-martial.

(9) To make a voluntary statement, oral or written, to be included in the record of proceedings.

(10) To make an argument at the conclusion of presentation of evidence.

(11) To be properly advised concerning the Privacy Act of 1974. See section 0308 and Appendix A-3-a.

NOTE: In courts of inquiry only, a party shall be advised of and accorded two additional rights:

(12) To challenge members of the court of inquiry for cause stated to the court, Article 135(d), UCMJ; section 0414 of this Manual.

(13) If charged with an offense, to be a witness at his own request and not to be called as a witness in the absence of his own request.

b. *Right to counsel*

(1) The party is entitled to be represented during the proceedings of the court or investigation by civilian counsel provided by himself at no expense to the Government; by military counsel provided by the Government at no expense to the party. Such military counsel shall be of his own selection if reasonably available; or by military counsel appointed for him by appropriate military authority. Upon request for appointed military counsel, counsel qualified under Article 27(b), UCMJ should be appointed, if practicable, and must be appointed if the court or investigation is to be used as a pretrial investigation required by Article 32, UCMJ. There are no special legal qualifications required of civilian counsel provided by the party himself or of military counsel selected by him. In any case in which the court or

investigation is to be used as an investigation under Article 32, UCMJ and the party introduces non-lawyer civilian counsel or requests non-lawyer military counsel, he must be carefully advised that he is entitled to the appointment of military lawyer counsel and that proceeding without lawyer counsel will be considered a waiver of this right. Appointed military counsel will be provided for a civilian party only under one of the following circumstances:

(a) The civilian party is in a status in which he might be subject to trial by court-martial, and the court of inquiry or investigation may be used as a pre-trial investigation under Article 32, UCMJ.

(b) Doubt exists as to the mental or physical competency of the civilian party, and he is not represented by counsel who seems capable of adequately protecting the party's interests.

(c) The convening authority directs such action on the ground that under the peculiar circumstances of the case, the interests of the Government would be best served by making military counsel available to represent the civilian party.

(2) It is the duty of counsel to represent the party to the best of his ability and to protect and safeguard the interests of the party by all honorable and legal means. If counsel for a party is absent, a court of inquiry or formal investigation shall not proceed until his return, or until new counsel for the party is retained by him or appointed for him. However, the party may waive his right to have counsel present provided the party understands his right to counsel and the effect of the waiver. The explanation of this right and any waiver thereof shall be reported verbatim in the record.

(3) When directing that a court of inquiry or formal investigation be conducted, and the medical officer states that a member to be designated a party is incompetent due to injuries or disease and will remain so for at least 60 days, the convening authority will ensure that a qualified lawyer counsel is appointed to represent the party during the proceedings of the court or investigation. Such counsel is obligated to exercise all the rights of the party as though the party were present.

c. *Explanation of rights.* At the outset of the proceeding of a court of inquiry or formal fact-finding body, all parties so designated shall be informed of the rights set forth in section 0304a, and shall be asked if explanation is desired regarding any of such rights. Further explanation shall be provided to any party who requests it. Counsel for any party may waive such information and explanation by stating to the investigative body that the party to the proceeding has been fully informed and understands his rights as a party. Upon designation of a person as a party during the course of the investigative proceeding, the same course shall be followed as regards information and explanation as to rights, and a waiver may similarly be made by counsel.

d. *Examination of previous record by party designated during proceedings; recall of witnesses.* The record of proceedings to the point the investigation has progressed will be made available for examination by a newly designated party and his counsel. Such a party may request that specified witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit the recalling of a witness, evidence may be obtained from him by means of a sworn statement. In the absence of compelling justification, investigative proceedings shall not be suspended pending the obtaining of any such statement.

e. *Previous testimony of witness thereafter designated as a party.* Any testimony given by a person as a witness prior to his designation as a party remains in the record and is considered and used thereafter without regard to his subsequent designation as a party.

f. *Person on witness stand when designated party.* If a person is on the witness stand at the time he is designated a party, or is thereafter called as a witness, see section 0305 for the procedure to be followed.

g. *Failure to accord rights*

(1) In cases where nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or formal fact-finding body before which the accused was not designated a party or accorded the

rights of a party, the procedures shall be as prescribed in section 0101d.

(2) In cases where an adverse determination respecting the contracting or incurrence of a disease or injury in line of duty or as the result of misconduct is contemplated on the basis of the record of a court of inquiry or formal fact-finding body before which the person concerned was not designated a party or accorded the rights of a party, the procedures shall be as prescribed in section 0815.

(3) In cases where a general court-martial is contemplated respecting an accused, the record of a court of inquiry or formal fact-finding body before which the accused was not designated a party or accorded the rights of a party may not be used in lieu of a formal pretrial investigation of the offenses charged against the accused. See Article 32(c), UCMJ.

(4) In cases where charges have been brought against an accused before a court-martial, military commission, or other tribunal which is required fully to observe the rules of evidence as prescribed in the UCMJ and in chapter XXVII of the MCM, sworn testimony contained in the record of proceedings of a court of inquiry before which that accused was not designated a party or accorded the rights of a party may not be received in evidence by that court-martial, military commission or tribunal unless such testimony is admissible independently of the provisions of Article 50, UCMJ.

h. *Waiver of rights of a party.* Waiver of rights listed in section 0304a which involve notice, information, or advice to be given a party (except regarding an offense of which accused or suspected), may be effected only by explicit statement on the record by party or his counsel. Advice as to the nature of any offense of which accused or suspected, advice as to the right to refrain from making any statement regarding such offense, and advice as to the possible use against him of any statement in a trial by court-martial may not be waived. See Article 3lb, UCMJ. Any other right is conclusively waived by the party's failing to exercise it, unless he has made, upon the record, a request to exercise it and such request has been denied.

i. *Right to a copy of the record.* A party to an investigation is not entitled to a copy of the record or any part thereof, unless the record is to be used as a pretrial investigation under Article 32, UCMJ and trial of the party by general court-martial has been ordered. Consideration should be given to conducting a separate pretrial investigation when the record or report of the investigation contains either classified material or any unclassified material which might be of assistance in the prosecution or support of a claim against the United States. If a letter of censure or other non-judicial punishment is imposed, see section 0101f (7) concerning the right of the individual concerned to have access to a copy of the record.

0305 WITNESSES

a. *Calling witnesses.* Although only courts of inquiry and boards convened for the redress of injuries to property (see Article 139, UCMJ and chapter X) have powers to subpoena witnesses, all administrative fact-finding bodies convened under these regulations may request civilian witnesses to attend, whether or not they are connected in any way with the naval service, and may request cognizant commanding officers to make members of the Armed Forces and persons employed by the Department of Defense available to testify. No fact-finding body is confined to any Federal reservation in its quest for relevant testimony.

b. *Competency of witnesses.* Any party or other person charged with an offense relating to the matter under investigation shall be a competent witness before a court of inquiry only at his own request. 18 USC 3481. A person is charged with an offense when he has been formally accused by indictment or information, or by the preferring of charges and specifications pursuant to Article 30, UCMJ. Subject to this statutory limitation, any party or other person, regardless of whether charged with or suspected of an offense, is competent as a witness before any formal or informal fact-finding body, and may be called whether or not he requests to be a witness.

c. *Compulsory self-incrimination prohibited*

(1) No witness shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him; nor shall he be compelled to make any statement or produce evidence if the statement or evidence is not material to any issue under investigation and may tend to

degrade him. See Article 31 (a) and (c), UCMJ; paragraph 150, MCM. The fact-finding body should advise an apparently uninformed witness of his right to decline to answer any question which might tend to incriminate him.

(2) If a person called as a witness before a court of inquiry or formal board of investigation is suspected of or is charged with an offense, he shall be informed of the nature of the offense and the subject matter of the inquiry. He shall also be advised that he does not have to make any statement or give any testimony regarding the offense of which he is suspected or accused and that any statement or testimony made by him may be used as evidence against him in any subsequent trial. Article 31 (b) UCMJ. After being so informed, the right to refrain from testifying regarding the offense of which he is suspected or charged must be claimed by the witness. Despite assertion of such a right, however, the witness may be questioned on matters other than the offense of which he is suspected or charged.

(3) If a person suspected or charged with an offense is required as a witness in connection with an informal investigation, the procedure set forth in 0606d(2) will be followed.

d. *Privacy Act compliance*. When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a.

0306 WARNING REQUIRED BEFORE REQUESTING STATEMENTS REGARDING DISEASE OR INJURY

A member of the Armed Forces may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid. 10 USC 1219. Any person in the Armed Forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, shall be advised of his right not to sign such a statement.

The spirit of this section will be violated if a person, in the course of a JAG Manual investigation, obtains the member's oral statements and reduces them to writing, unless the above advice was given first.

0307 WARNING WITNESSES

The fact-finding body in its discretion may direct witnesses who are subject to naval authority, not to discuss their testimony with other witnesses or persons who have no official interest in the matter until the investigation is completed. Other witnesses may be requested, in a similar manner, not to discuss their testimony. This warning may be given to ensure that the matter before the fact-finding body can be fairly heard and to eliminate the possibility that disclosures of the substance of the testimony may influence the testimony of witnesses still to be heard.

0308 ADVICE REQUIRED BY THE PRIVACY ACT

a. *Privacy Act statements for JAG Manual investigations and claims investigations.* Pursuant to SECNAVINST 5211.5 series and the Privacy Act of 1974 (5 U.S.C. § 552a), the following procedures shall be applicable to JAG Manual investigations [chapters II through X] and claims investigations [chapters XX through XXIV], including letter reports and form reports.

(1) *Advice required.* When any individual is requested by a person acting on the Government's behalf to supply personal information about himself for a record in a system of records in the course of a JAG Manual investigation or claims investigation, the person making the request shall first provide the individual, in duplicate, a Privacy Act statement containing the particular information prescribed in SECNAVINST 5211.5 series. The original is to be signed by the individual and appended to the record of the investigation, and the copy should be retained by the individual. If the information is requested in an interview or hearing, the Privacy Act statement should also be orally summarized and explained as necessary to ensure that the individual fully understands it. The requirement for a Privacy Act state-

ment is cumulative to other applicable warnings or advisements required by the provisions of the Manual, and warnings under Article 31, UCMJ, and related court decisions, where applicable.

(2) *"Personal information" defined.* Personal information is information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. It ordinarily includes, for example, information pertaining to an individual's financial, family, social, and recreational affairs; his medical, educational, employment, or criminal history; or information that identifies, describes, or affords a basis for inferring personal characteristics, such as finger or voice prints or photographs. It ordinarily does not include such information as the time, place, and manner of, or reasons or authority for, an individual's execution or omission of acts directly related to the duties of his Federal employment or military assignment.

(3) *"System of records" defined.* A group of records under the control of the Department of the Navy or of any element of the Navy Department, operating forces, or shore establishment, from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(Note: It would be extremely rare for personal information furnished by a witness to be retrieved by the witness' name or other personal identifier.)

(4) *Social Security numbers.* An individual, even though a member or employee of the naval service, should not be requested to provide his social security number in connection with a JAG Manual investigation or claims investigation. This will obviate the need for giving the individual a social security number statement, which is generally required when an individual is requested to furnish his social security number, because JAG Manual investigations and claims investigations do not fall under the strict definition of "personnel," "finance," or "medical" records, as these terms are used in SECNAVINST 5211.5 series. The number can generally be obtained from other available records if necessary in a particular investigation.

(5) *Privacy Act statement contents.* Appendix A-3-a is a format which is intended to include every item of information that would be required for a Privacy Act statement in connection with any JAG Manual investigation or claims investigation. It should be used as a basis for tailoring a specific Privacy Act statement appropriate to the particular purposes and subject matter of each investigation and the role of the particular party or witness in relation to the matter under investigation.

(6) *Local forms.* Locally-prepared forms utilizing the format in Appendix A-3-a are authorized. Copies of local forms for Privacy Act statements prepared for use in JAG Manual investigations shall be filed on a current basis with the Judge Advocate General (Code 21). Those prepared for use in claims investigations shall be filed with the Judge Advocate General (Code 15).

b. *Reviewing authorities*

The officer exercising general court-martial jurisdiction (or, in the case of a claims investigation, the appropriate officer designated as an adjudicating authority) has the responsibility to ensure that remedial action, as appropriate, is taken to rectify any noncompliance with the Privacy Act indicated in the investigative record prior to forwarding the record to the Judge Advocate General.

c. *Records of disclosures*

Appendix A-3-b is recommended for use, as required, in recording and accounting for disclosures or information about identifiable individuals from records that are collected, used, or maintained pursuant to directives under the cognizance of the Judge Advocate General. Local reproduction is authorized.

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Article 135, UCMJ (10 USC 935) concerning courts of inquiry is quoted as follows:

"(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

"(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

"(c) Any person subject to this chapter [UCMJ] whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter [UCMJ] or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

"(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

"(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

"(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

"(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

"(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel."

0402 APPOINTING ORDER

a. *Authority to convene.* As noted in the foregoing section, any person authorized to convene a general court-martial or any other person designated for that purpose by the Secretary of the Navy may convene a court of inquiry.

b. *Form of appointing order.* Courts of inquiry are appointed by an appointing order signed by the convening authority. The appointing order shall be in official letter form addressed to the president of the court. When circumstances warrant, a court of inquiry may be convened on oral or message orders. Written confirmation of oral and message orders will be issued in each case. Message orders and all confirmations of orders shall be included in the record of proceedings of the court.

c. *Contents of appointing order.* The appointing order of a court of inquiry shall name the president, the members, and the counsel. When appropriate, it shall designate parties to the inquiry. It shall specify the time and place for initial meeting. It shall recite the specific purposes of the inquiry and shall contain explicit instructions as to the scope of the inquiry. Inasmuch as the information developed by the court is used not only by the convening authority but in many cases by authorities remote from his command, the appointing order should contain ample instructions to ensure the accomplishment of the purposes for which the court was convened. The court shall be directed to report findings of fact. If the convening authority desires, he may also direct that opinions and recommendations be submitted. The appointing order may in appropriate cases provide for the appointment of reporters and interpreters. For an example of an appointing order for a court of inquiry, see Appendix A-4-a.

d. *Seniority of members.* No member of a court of inquiry should be junior in rank to any officer designated a party in the appointing order. Should an officer senior to any member be designated a party during the proceedings, the convening authority shall be notified so that he may revise the membership in accordance with the seniority principle, if practicable. Whenever it has not been practicable to adhere to the seniority principle in membership, the convening authority shall state the reasons therefor in his action on the record of proceedings. The seniority principle is not applicable to counsel.

e. *Amendments.* The convening authority may amend the appointing order at any time to change the membership of the court of inquiry, to limit or increase the scope of the inquiry, to name additional parties, or to provide additional instructions. An example is contained in Appendix A-4-b.

f. *Advance copies.* On occasion, it may be advantageous to forward an advance copy of the appointing order to interested superiors so that they may be apprised of significant occurrences and actions being taken in connection therewith.

0403 DUTIES OF THE PRESIDENT

a. *General.* The president shall administer the oath to the counsel for the court, preserve order, and decide upon matters relating to the routine business of the court. He may recess or adjourn the court to meet at a time or place as will be most convenient and proper.

b. *Rulings.* Should a member object to the president's ruling on any matter, a vote shall be taken in closed session and the decision of the majority shall govern. In case of a tie vote, the decision of the president shall govern except as to challenges of members. See section 0414b.

c. *Obtaining information.* Whenever it appears desirable to members of the court that certain information be elicited or developed in the interest of establishing or clarifying any matter, the president will so advise counsel for the court and may direct counsel to call witnesses, to pursue further lines of questioning, or to adduce other evidence. The president and other members of a court may examine witnesses upon completion of examination by counsel.

0404 MEMBERS

a. *Attendance.* The attendance at the proceedings of a court of inquiry becomes the primary duty of an officer appointed a member. No member shall fail in his attendance at the designated time and place unless prevented by illness, ordered away, or excused by competent authority.

b. *Absence.* The court may, in the absence of a member, proceed with the inquiry only if authorized and directed to do so by the convening authority. Unless at least three members and a majority of the total membership are present, no business other than an adjournment shall be transacted. If it appears that a member will be absent for more than a short period of time and the absence reduces the court to less than three members, the convening authority shall be advised. He shall appoint additional members to ensure that at least three members will be present. Any substituted or additional member appointed shall examine the record of the proceedings conducted prior to his sitting as a member, and the fact of such examination shall be noted on the record. After such examination, each substituted and additional member shall participate fully in the subsequent proceedings of the court and in its deliberations relative to findings of fact, opinions, and recommendations.

c. *Temporary absence.* When a member of a court who has been temporarily absent returns, the record of that part of the proceedings conducted in his absence shall be examined by him, and such examination noted in the record. Such temporary absence does not preclude that member's full participation in the deliberations of the court relative to findings of fact, opinions, and recommendations.

0405 COUNSEL FOR THE COURT

a. *Requirement.* The appointment of counsel for the court is required. Whenever practicable, counsel should be qualified under Article 27(b), UCMJ. Assistant counsel for the court may be appointed. If an understanding of the matters under inquiry involves a high degree of technical knowledge, convening authorities are encouraged to appoint an officer who possesses this technical knowledge as assistant counsel. Assistant counsel need not be qualified under Article 27(b), UCMJ.

b. *Duties.* Counsel for the court shall call witnesses and conduct the direct examination of all witnesses except those requested or called by a party.

He shall arrange for a place for the court to meet, and for the assistance of reporters, interpreters, orderlies, and clerical assistants. He shall administer the oath or affirmation to all members, reporters, interpreters, and witnesses. He shall also supervise the recording of the proceedings and the preparation of the record. He shall ensure that the Privacy Act is fully complied with prior to requesting an individual to supply personal information. See section 0308 and Appendix A-3-a.

c. *Responsibility.* The primary responsibility of counsel is to exploit all practicable sources of information in order to bring out all the facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned.

d. *Absence of counsel.* If the counsel for the court is absent and there is an appointed assistant counsel, he may, in the discretion of the court, act as counsel and the proceedings may continue. Otherwise, the court shall adjourn, report the absence to the convening authority, and await the return of counsel or the appointment of a new counsel.

0406 PARTIES

See chapter III for provisions relating to parties, their rights, and their counsel.

0407 REPORTERS AND INTERPRETERS

a. *Reporters.* The reporters appointed to record the proceedings of a court of inquiry may use longhand, shorthand, or a mechanical or sound recording device. A verbatim record of the proceedings shall be compiled, subject to exceptions authorized in section 0435.

b. *Interpreters.* In all courts of inquiry where testimony is to be given in other than the English language, an interpreter shall be appointed. Prior to the assumption of his duties the interpreter shall satisfy the court that he is fully conversant with the language to be interpreted and that he has a good command of the English language. If it appears to the court that the interpreter is experiencing difficulty in interpreting, or if there is an objection by a party that the interpreter is not fully and correctly interpreting, the court shall immediately inquire into the matter. If it appears that the interpreter is not able to interpret accurately and intelligently, the court shall report this to the convening authority and request that a competent person be appointed. Until the appointment of another interpreter, no further interrogation of the witness whose testimony is to be interpreted shall be undertaken.

c. *Appointment*

(1) If additional expense to the Government is involved in the employment of reporters or interpreters, the convening authority should follow the procedure set forth in section 0110 of this Manual.

(2) The details of the appointment of reporters or interpreters will not be set forth in the record of proceedings. Only the name of such individual and the fact that he was sworn to undertake his particular duties need be shown.

0408 GENERAL PROCEDURE

A court of inquiry is governed generally by the principles of military law, applying procedural rules analogous to those for trials by general courts-martial where appropriate and not otherwise prescribed. The court should refer to the Manual for Courts-Martial, Court Martial Reports, and other authoritative legal publications for guidance. However, the mission of the court shall be given primary consideration in the determination of procedural questions not expressly covered in these regulations.

0409 PRELIMINARY PROCEDURES

A court of inquiry shall assemble at the place and, as nearly as practicable, at the time named in the appointing order. The court may adjourn, when desirable, to any place as may be convenient to the court. The members shall take their seats in the same order as on courts-martial. Courts of inquiry are usually cleared until the order constituting them and the instructions contained in the appointing order have been read and the manner of proceeding decided. Normally counsel for the court will not withdraw when the court is cleared for preliminary procedures.

0410 MEETING OF THE COURT

a. *Sessions.* The proceedings will be public unless the convening authority or the court, for security reasons or other good cause, directs that the entire proceedings or any portion thereof be closed to the public. The fact that the inquiry is not open to the public does not require exclusion of the parties to the inquiry or their counsel. If the matter to be heard requires a security clearance and individual counsel has not been granted such clearance, the convening authority shall be advised thereof; see paragraph 7-106h, Department of the Navy Security Manual for Classified Information, OPNAVINST 5510.1 series, with respect to necessary security clearance of personnel and procedures. If such a person or civilian counsel is not so cleared, section 0140b of this Manual shall be followed.

b. *Clearing the court.* The court may be cleared at any time for deliberation or consultation, whereupon the parties and their counsel will withdraw. Counsel for the court will also withdraw unless requested to remain. During an open hearing when numerous spectators are present, the court may withdraw to another room for deliberation or consultation.

c. *Spectators–publicity.* As a general rule, the public will be permitted to attend open sessions of a court of inquiry. During any session of the court the taking of photographs in the courtroom or broadcasting of the proceedings from the courtroom (radio or television) shall not be permitted.

0411 RECESS AND ADJOURNMENT

Courts of inquiry may recess or adjourn for such period as may be necessary without permission of the convening authority. However, if the adjournment is for more than three days, the convening authority shall be informed by the president.

0412 RULES OF EVIDENCE

The court is not bound strictly by the rules of evidence prescribed for trials by court-martial. Admissibility of reliable evidence, notwithstanding a legal exclusionary rule, is a matter of discretion. Nevertheless, the court must enforce constitutional and statutory personal privileges, and a general observance of the spirit of the rules contained in chapter XXVII, MCM, will promote orderly procedure and ensure a full, fair, and impartial investigation. The rights of witnesses and parties shall be carefully safeguarded.

0413 PRESENCE OF PARTY AND COUNSEL

a. *At organization of court.* As soon as the court has determined the manner of proceeding and whether the court will be open or closed to the public, each party named in the appointing order shall be called before the court. Parties may be called individually, in groups, or all together. Any party represented by counsel may appear before the court with counsel at this time, and counsel may enter waiver of record of either or both the reading of the appointing order and advice as to rights (except as to a party suspected of an offense) as to the party or parties represented by him. Unless waived, the appointing order shall be read to the party or parties before the court. The rights of a party, as set forth in section 0304, shall be fully explained by the counsel for the court. The record may state simply that the appointing order was read or the reading thereof waived, but advice as to rights shall be reported verbatim. If any party is not represented by counsel and desires such representation, the court shall recess until counsel is obtained. If it is essential that the court take testimony which might otherwise become not conveniently obtainable, then, in lieu of recessing, the court shall appoint counsel (qualified under Article 27(b), UCMJ) to represent the party until he can obtain the attendance of counsel of his choice, and proceed with the taking of such testimony.

b. *Waiver.* A party to a court of inquiry may waive his right to be present during any portion of the proceedings. This waiver must be intelligently and knowingly made by the party or his counsel and the court shall carefully consider such waiver prior to proceeding in the absence of a party. Likewise, where the party is represented by counsel, the party may waive the presence of his counsel at any session of the court. In the event of the absence of a party or his counsel, the record shall show such absence and the express waiver by the party. The record shall also affirmatively show the beginning and the end of the absence of any party or his counsel.

0414 CHALLENGE

a. *The right.* Any member of a court of inquiry may be challenged at any time during the proceedings for cause stated to the court. The court will not receive a challenge to more than one member at a time. After disclosing his ground for challenge, the party may examine the member concerning that ground. This examination may or may not be under oath, at the discretion of the challenging party, but it shall be recorded verbatim. Counsel for the court may cross-examine the challenged member. After such examination and cross-examination, any other evidence bearing on the cause for challenge will be heard.

b. *Decision on challenge.* The burden of establishing the ground for challenge is on the party who made the challenge. The challenged member withdraws when the court is cleared to determine the challenge. A majority or tie vote disqualifies the challenged member. The court decides the challenge according to the preponderance of the evidence. A sustained challenge is immediately reported to the convening authority. If it reduces the number of members below three, the court will adjourn until the convening authority appoints another member. If the membership is not reduced below three, the court may proceed with its inquiry unless otherwise directed by the convening authority.

0415 OATHS

a. *Reporter.* Every reporter shall, before entering upon his duties, make an oath or affirmation, administered by counsel for the court, in the following form:

"You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

b. *Court members.* Before the court begins the inquiry prescribed by the appointing order, counsel for the court shall administer to the members the following oath or affirmation:

"You, AB, CD, and EF, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as members of this court, and that you will examine and inquire, according to the evidence, into the matter now before you without partiality. So help you God."

c. *Counsel.* When the oath or affirmation has been administered to the members, the president of the court shall administer the following oath or affirmation to the counsel for the court, and his assistant counsel, if any (Counsel for the parties are not sworn):

"You swear (or affirm) that you will faithfully perform the duties of counsel (assistant counsel) for this court. So help you God."

d. *Interpreter.* Every interpreter shall, before entering upon his duties, make oath or affirmation, administered by counsel for the court, in the following form:

"You swear (or affirm) that you will faithfully perform the duties of interpreter to this court. So help you God."

e. *Challenged member.* If a challenged member is to be examined under oath as to his fitness to serve, counsel for the court shall administer the following oath or affirmation:

"You swear (or affirm) that you will answer truthfully to the questions touching your competency as a member of the court in this case. So help you God."

f. *Witnesses.* All persons who testify before the court shall be examined on oath or affirmation, administered by counsel for the court before they first testify, in the following form:

"You swear (or affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth. So help you God."

NOTE: In the administration of an affirmation, the word "affirm" is used in lieu of "swear." The words "so help you God," should be omitted in (1) administering an affirmation to one who does not believe in a Supreme Being; or (2) administering an affirmation to one whose individual religious belief forbids both his use of the word "swear" and a reference to the Supreme Deity in a secular proceeding.

0416 ORDER OF PRESENTATION

Witnesses are usually called for examination in the following order: Witnesses called by the counsel for the court; witnesses called by a party; witnesses called by counsel for the court in rebuttal; witnesses called by a party in rebuttal; and witnesses requested by the court. The order of examining each witness is usually direct examination, cross-examination, redirect examination, recross-examination, and examination by the court. Each witness will then be permitted to make a statement relating to matters pertinent to the inquiry not previously brought out in his testimony. Thereafter, counsel for the court or counsel for the parties will be permitted to examine the witness further concerning these matters as well as any matters touched upon in examination by the court. The foregoing order of presentation need not be followed when the court, in the exercise of its sound discretion, feels that a deviation therefrom will secure a more effective presentation of the evidence. However, such deviation shall not be permitted to prejudice the interests of any party to the inquiry.

0417 ATTENDANCE OF WITNESSES

It is the duty of counsel for the court to arrange for the attendance of all witnesses, both military and civilian. Witnesses may be summoned to appear and be examined before courts of inquiry in the same manner as provided for courts-martial. The provisions paragraph 115, MCM and sections 0138-0139 of this Manual are applicable except that terminology peculiar to courts of inquiry will be understood to apply where appropriate. A warrant of attachment (see paragraph 115, MCM) shall not be issued by a court of inquiry without prior approval of the Secretary of the Navy (Judge Advocate General).

0418 INTERVIEWING WITNESSES

Counsel for the court, any party, and counsel for any party are not precluded from interviewing any witness at any time, regardless of whether such witness has previously testified. The Privacy Act of 1974 must be complied with if an individual is asked by counsel for the court to supply personal information. See section 0308 and Appendix A-3-a.

0419 EXCLUSION OF WITNESSES

Witnesses other than a party ordinarily should be excluded from the courtroom except when they are testifying. In some cases expert witnesses may not be able to testify in an informed manner unless they are fully aware of all the circumstances surrounding the incident under inquiry. In such instances, and where the expert witness cannot give direct testimony concerning the incident, it is necessary to allow such expert to be present during the open sessions of the court in order that he may be sufficiently advised of the facts to give informed testimony as to the technical aspects of the incident. In these instances, the record must affirmatively show that the witness was present during the testimony of other witnesses.

0420 EXAMINATION OF WITNESSES

After a witness has been sworn, he should be informed of the nature of the inquiry unless it appears that he has been previously so informed. The court should protect every witness from improper questions, harsh or insulting treatment, and unnecessary inquiry into his private affairs. To prevent the false shaping of testimony through collusion, coercion, or other means, the court may request or direct a witness (see section 0307) to refrain from discussing his testimony or prospective testimony with other witnesses or any other person not having an official interest in the inquiry. See sample record of a court of inquiry in Appendix A-4-d(6) for form of instruction. See section 0305d regarding the Privacy Act of 1974.

0421 AFFIDAVITS

a. *Conditions for use of affidavits.* When the testimony of a witness is desired by a court of inquiry, but it appears that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court is sitting, or beyond the distance of one hundred miles from the place where the court is sitting; or that the witness, by reason of age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place where the court is sitting; or that the present whereabouts of the witness is unknown, an affidavit of such witness may be received in evidence by the court.

b. *Situations in which depositions are desired.* If a situation arises in which it would be desirable to take a deposition pursuant to oral or written interrogatories, this may be accomplished in such manner as the court of inquiry may deem preferable after hearing presentations by counsel for the court and any party concerned. If there is any likelihood that the deposition might be required in a subsequent court-martial proceeding, the procedures should comply with paragraph 117, MCM and guidelines prescribed in decisions of the Court of Military Appeals.

c. *Privacy Act compliance.* The Privacy Act shall be complied with if an individual is requested by a Government representative to supply personal information in an affidavit. See section 0308 and Appendix A-3-a.

0422 DOCUMENTARY EVIDENCE

The original of a document or writing is superior in evidentiary value to a copy. This is true even as regards modern photographic duplications which are susceptible to tampering through such devices as masking or page substitutions. Often, it is not feasible to incorporate originals in court of inquiry records due to such factors as inconvenience involved in obtaining them, or their required retention in official files, or for use in a subsequent court-martial or civil court proceeding. In such cases the record of proceedings should reflect the location of the original; contain the most reliable copy practicably obtainable; and indicate how its reliability was established, *e.g.*, certificate of custodian of official records or comparison of copy with original document by counsel and/or members of the court of inquiry. A court of inquiry may receive a proffered copy of a document, noting upon the record at the time that later assurance of the veracity and authenticity of the document will be submitted to the court or to the convening or reviewing authorities for attachment to the record.

0423 CLASSIFIED MATERIAL

See section 0209c of this Manual.

0424 EXHIBITS

a. *General.* Exhibits will be numbered in the sequence in which they are received in evidence. It is ordinarily impracticable to attach real evidence (physical objects such as weapons, clothing, pieces of equipment, etc.) to the record. Such exhibits should be clearly and accurately described in the record by testimony or other means (photographs, for example) so that they may be considered properly on review.

b. *Custody.* At the conclusion of the inquiry, articles received in evidence should be delivered to the convening authority (his designated representative), to be preserved for subsequent use as evidence if disciplinary action is to be taken. When final action has been taken in the case, the articles shall be returned to their rightful owners. If the owners are not known appropriate disposition may be made of them.

c. *Copies.* When original deck logs, bell books, or other naval records are received as exhibits, an accurate copy will be substituted when the record is prepared for submission. If damage of an admiralty nature is involved, the procedure set forth in chapter XII shall be followed.

0425 COMMUNICATIONS WITH THE CONVENING AUTHORITY

If at any time during the course of the proceedings it should appear, from the evidence adduced or otherwise, that circumstances exist in the light of which the convening authority might consider it advisable to enlarge or restrict the scope of the inquiry, to alter the composition of the court (whether by augmentation or substitution), or to cancel or otherwise modify any instruction set forth in the appointing order, a report should be made to the convening authority. The court may include recommendations in this report. The convening authority may take such action on this report as he, in his discretion, deems appropriate. Copies of all such communications and replies should be appended to the record.

0426 VISITING SCENE OF INCIDENT

When practicable, it may be desirable to visit the scene of the incident. Usually no testimony is taken at the scene, the sole purpose being to acquaint the court with the physical characteristics of the scene. The court should normally be accompanied to the scene by counsel for the court, the parties and their counsel, and the reporter, but any party may waive attendance by either or both himself and his counsel.

0427 STATEMENTS OF THE PARTIES

Regardless of whether a party has previously testified as a witness, he may make an unsworn statement to the court after all the witnesses have testified and before the arguments. The party may not be cross-examined upon this unsworn statement. Counsel for the court or any of the other parties to the inquiry may, however, introduce evidence to rebut any statements of fact contained therein. The statement may be oral or written, and may be made by the party or his counsel. The statement should be factual, not argumentative, in nature.

0428 ARGUMENTS

After the testimony and statements by the parties, if any, the counsel for the court and the counsel for the parties shall be permitted to present argument if they so desire. The impartial role of the counsel for the court required by section 0405c shall not be abandoned. If counsel for the court presents argument, his remarks should be in the nature of a summation of the evidence rather than partisan advocacy. The counsel for the court has the right to make the opening argument and, if any argument is made on behalf of a party, the closing argument. The court may set any reasonable limitation on the length of arguments.

0429 REPORT BY THE COURT

After all the evidence is in and all statements and arguments have been received, the court shall declare the inquiry closed. The court will then consider the evidence, statements, and arguments, and the instructions contained in the appointing order shall be carefully re-examined and scrupulously followed. At the request of the court, counsel therefor shall assist in the preparation of the findings of fact, opinions, and recommendations, or any part thereof. The report of findings of fact, opinions, and recommendations shall become a part of the record.

0430 FINDINGS OF FACT

The court, after deliberating on the evidence received during the inquiry, shall first proceed to record the facts found which constitute a detailed description of the matter investigated. Care shall be taken to state only facts. The findings of fact shall include only those facts which the court believes the evidence establishes, and nothing further. A fact need not be proved beyond a reasonable doubt to be listed as such; believable evidence in the record to support the finding is adequate. See Appendix A-4-e(1).

0431 OPINIONS

If opinions are called for in the appointing order or required by regulations, the court shall list all of its opinions drawn from and supported by the facts. Depending upon the nature of the inquiry and the provisions of the appointing order, opinions include inferences drawn from the facts; opinions as to performance of duty by individuals concerned or as to performance of functions by equipment involved; and opinions required by regulations. For guidance as to what opinions must be expressed and opinions which will not be required or expressed in specific situations, see chapters VIII and IX and Appendix A-4-e(2).

0432 RECOMMENDATIONS

When the appointing order calls for recommendations the court shall make such recommendations as are specifically directed and any others that, in its opinion, are appropriate and advisable in view of the nature of the facts found and opinions expressed. If any member of the court recommends trial by court-martial, a charge sheet, signed and sworn to by a member who has so recommended, shall be prepared and submitted to the convening authority with the record of proceedings. See paragraph 29, MCM. If a punitive letter of reprimand or admonition is recommended , a draft of the recommended letter will be prepared and forwarded with a record of proceedings. If a nonpunitive letter is recommended, a draft will be prepared and separately forwarded to the appropriate commander for issuance, but will not be included as a part of the record of proceedings. See Appendix A-1-a, A-1-b(1), A-1-c(1), and A-4-e(2).

0433 DISAGREEMENT AMONG MEMBERS

The report of the court shall be based upon the opinion of the majority. If a member does not concur with the findings, opinions, or recommendations of a majority of the court, he shall append his minority report to the record and state explicitly the parts of the majority report with which he disagrees and the reasons therefor. The minority report may also include additional findings of fact, opinions, or recommendations. See Appendix A-4-e(2).

0434 OBLIGATION OF SECRECY

Although not prohibited by his oath, no member or counsel for the court, or other person officially connected with the inquiry, shall disclose or publish any findings, opinions, or recommendations of the court or of the individual members without prior approval of the Secretary of the Navy (Judge Advocate General).

0435 PREPARATION AND SUBMISSION OF THE RECORD

a. *Composition.* The record of proceedings of a court of inquiry shall include the original appointing order and any other communications from the convening authority. It shall contain the verbatim testimony of all witnesses and all proceedings of the court, except that, in the discretion of the court, arguments presented on behalf of the Government and any party to the inquiry may be summarized. Routine proceedings of the court may, however, be described in the past tense as actions taken in lieu of present tense recording of language actually used by participants; but this shall not include advice provided as to the rights of parties or statements or actions of parties respecting the exercise or waiver of such rights. The findings of fact, opinions, and recommendations shall be included as well as documents and exhibits received in evidence by the court. See section 0424. A copy of the findings of fact, opinions, and recommendations shall be prefixed to the record. See sample record in Appendix A-4-d.

b. *Signing and authenticating.* All concurring members shall sign the record immediately under the findings of fact, opinions, and recommendations. This includes an officer who participated in only part of the proceedings (provided he participated at the time of the findings). Such limited participation shall be disclosed in the record of proceedings. In the case of a minority report, the respective reports must be signed by the members of the court concurring therein. The proceedings shall be authenticated by the signatures of the president and counsel for the court. In case the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president, and in case the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel (Art. 135h, UCMJ). See Appendix A-4-e(3).

c. *Forwarding.* The record of proceedings, together with the number of complete copies required by the circumstances, shall be forwarded to the convening authority by the president using a short letter of transmittal. See Appendix A-4-b.

d. *Privacy Act compliance.* When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

0436 ACTION OF THE CONVENING OR REVIEWING AUTHORITY ON THE RECORD

See section 0210 and Appendix A-4-c of this Manual.

0437 SAMPLE RECORD

The sample record of proceedings of a court of inquiry in Appendix A-4-d may be used as a guide in the conduct of the proceedings of a court of inquiry. Nothing in the sample record, however, shall be considered as authority to depart from the provisions of this chapter. Deviations from the sample proceedings, when not inconsistent with the provisions of this chapter, may be made when appropriate and necessary to execute the primary mission of fact-finding more effectively. When procedural steps are taken which are not covered in the sample record, the provisions of appendix 8, MCM may be consulted for general guidance.

Chapter V

FORMAL FACT-FINDING BODIES

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PART A - FORMAL BOARDS

0501 COMPOSITION

A formal board of investigation shall consist of two or more commissioned officers. When practicable, the senior member should be at least a lieutenant commander in the Navy or a major in the Marine Corps.

0502 APPOINTING ORDER

a. *Authority to convene.* For persons authorized to convene a formal board of investigation, see section 0206b of this Manual.

b. *Form of appointing order.* Formal boards of investigation are convened by an appointing order signed by the convening authority. The appointing order shall be in official letter form addressed to the senior member of the board. When circumstances warrant, a formal board may be convened on oral or message orders. Written confirmation of oral and message orders will be issued in each case. Message orders and all confirmations of orders shall be included in the record of proceedings.

c. *Contents of appointing order.* The appointing order of a formal board of investigation shall name the members and, when appropriate, separate counsel and parties. It shall specify the time and place for initial meeting. It shall recite the specific purposes of the inquiry and shall contain explicit instructions as to the scope of the inquiry. Inasmuch as the information developed by the investigative board is used not only by the convening authority but in many cases by authorities remote from the command, the appointing order should contain ample instructions to ensure the accomplishment of the purposes for which the investigation was convened. All formal boards shall be directed to report findings of fact. If the convening authority desires, he may also direct that opinions and recommendations be submitted. The appointing order may direct the administration of oaths to witnesses and the verbatim recording of the proceedings. In addition, it shall in every case state whether the formal board is or is not authorized to designate parties to the investigation. This authorization may be withheld despite the fact that the convening authority has, in the appointing order itself, designated a party or parties. This authorization may be granted broadly or it may be limited; that is, the formal board may be empowered to designate as a party any person whose conduct or performance of duty may be subject to inquiry (subject to the limitations contained in subsection 0302b), or it may be empowered to designate parties from a specified class of persons, for example, officers. The appointing order may provide for the appointment of reporters and interpreters.

d. *Seniority of members.* In those instances where the convening authority has designated or has authorized a formal board to designate parties, no member of the board should be junior in rank to any duly designated party. Should an officer senior to any member be designated a party during the proceedings, the convening authority shall be notified so that he may revise the membership in accordance with the seniority principle, if practicable. Whenever it has not been practicable to adhere to the seniority principle in membership, the convening authority shall state the reasons therefor in his action on the record of proceedings. The seniority principle is not applicable to counsel except when the junior member of a formal board is also acting as counsel.

e. *Amendments.* The convening authority may amend the appointing order at any time to change the membership of the formal board, to limit or increase the scope of the inquiry, to name additional parties, or to provide additional instructions.

f. *Advance copies.* On occasion it may be advantageous to forward an advance copy of the appointing order to interested superiors so that they may be apprised of significant occurrences and actions being taken in connection therewith.

0503 DUTIES OF THE SENIOR MEMBER

a. *General.* The senior member shall preserve order, decide upon matters relating to the routine business of the board. He may recess or adjourn the board to meet at a specified time and place.

b. *Rulings.* Should a member object to the senior member's ruling on any matter, a vote shall be taken in closed session and the decision of the majority shall govern. In case of a tie vote, the decision of the senior member shall govern.

c. *Obtaining information.* Whenever it appears desirable to the members of a formal board that certain information be elicited or developed in the interest of establishing or clarifying any matter, the senior member will so advise the counsel for the board (appointed or junior member as the case may be) and, where appropriate, may direct counsel to call witnesses to pursue further lines of questioning, or adduce such other evidence as may be deemed advisable. The senior member and the other members may examine witnesses upon completion of examination by counsel.

0504 MEMBERS

a. *Attendance.* The attendance at the proceedings of a formal board of investigation becomes the primary duty of an officer appointed a member of the board. No member of the board shall fail in his attendance at the designated time and place unless prevented by illness, ordered away, or excused by competent authority.

b. *Absence.* A formal board may, in the absence of a member, proceed with the investigation only if authorized and directed to do so by the convening authority. If it appears that a member will be absent for more than a short period of time, this fact shall be communicated to the convening authority who may appoint such new members as he may desire or direct that the investigation continue with the reduced membership.

c. *Temporary absence.* When a member of a formal board who has been temporarily absent returns, the record of that part of the proceedings conducted in his absence shall be examined by him, and the record will reflect that this has been done. Such temporary absence does not preclude that member's full participation in the deliberations of the board relative to findings of fact, opinions, and recommendations.

0505 COUNSEL FOR THE BOARD

a. *General.* It is not mandatory that separate counsel be appointed for a formal board of investigation. The convening authority may, in his discretion, appoint a separate counsel for the board but if he does not do so, the junior member of the board will act as counsel. If the convening authority appoints counsel for the board, he may also appoint such assistant counsel for the board as he may desire.

b. *Duties.* Counsel for the formal board, whether appointed or junior member, shall call witnesses and conduct the direct examination of all witnesses except those requested or called by a party. He shall arrange for a place of meeting of the board and for the assistance of reporters, interpreters, orderlies, and such clerical assistants as may be needed. Counsel for the board shall administer the oath or affirmation to the reporters, interpreters, and all witnesses. He shall also supervise the recording of the proceedings and the preparation of the record. It is the duty of the counsel for the board to bring out all the facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned. The counsel shall ensure that the Privacy Act of 1974 is fully complied with prior to requesting an individual to supply personal information. See section 0308 and Appendix A-3-a.

c. *Absence of counsel.* If the separately appointed counsel for the formal board is absent, the appointed assistant counsel, if any, may, in the discretion of the board, act as counsel and the proceedings may continue. Otherwise, the board shall communicate the fact of the absence to the convening authority who may appoint other counsel or assistant counsel, or may direct that the junior member of the board assume the duties of counsel and that the board continue with its proceedings.

d. *Qualifications.* It is not necessary that counsel for a formal board of investigation have any particular qualifications. In the interest of orderly proceedings and when available, however, convening authorities are encouraged to appoint a qualified lawyer as counsel. If an understanding of the matters under investigation involves a high degree of technical knowledge, consideration should be given to the appointment of counsel or assistant counsel who possess this technical knowledge.

0506 APPLICABLE COURT OF INQUIRY PROVISIONS

As a general rule, the principles and rules of procedure applicable to courts of inquiry set forth in chapter IV are to be applied, insofar as practicable and are not otherwise modified by the provisions of this chapter. In addition to the applicable provisions of chapters II and III, the following sections of chapter IV are applicable to formal boards of investigation:

Reporters and interpreters, section 0407 (When a verbatim record of proceeding has been directed);
General procedure, section 0408;
Preliminary procedures, section 0409;
Meeting of the board, section 0410;
Adjournment, section 0411;
Rules of evidence, section 0412;
Presence of party, section 0413;
Order of presentation, section 0416;
Interviewing witnesses, section 0418;
Exclusion of witnesses, section 0419;
Examination of witnesses, section 0420;
Affidavits, section 0421;
Documentary evidence, section 0422;
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Communications with the convening authority, section 0425;
Visiting scene of incident, section 0426;
Statements of the parties, section 0427;
Report by the board, section 0429;
Findings of fact, opinions, and recommendations, sections 0430--0432;
Disagreement among members, section 0433;
Obligation of secrecy, section 0434; and
Preparation and submission of the record, section 0435 (Provisions concerning a verbatim record are applicable only when the formal board of investigation has been directed to submit a verbatim record of proceedings).

0507 CHALLENGE

a. *Basis.* There is no authority to make or entertain a challenge of a member of a formal board of investigation. If, however, any party to an investigation has reason to believe that a member should not sit, he may present evidence to show such reason. A party may examine a member relative to his fitness as a member and such examination may be under oath at the discretion of the party. If requested, counsel for the board will administer the appropriate oath set forth in section 0415.

b. *Determination.* The board will not decide the issue but shall report the facts to the convening authority who shall determine if the member shall continue to sit. Copies of the communication and reply will be appended to the record.

0508 OATHS

Members and counsel of a formal board of investigation need not be sworn. The appropriate oaths for reporters, interpreters, and witnesses (as set forth in section 0415) shall be administered by counsel for the board.

0509 ATTENDANCE OF WITNESSES

A formal board of investigation has no power to subpoena witnesses. Otherwise, the provisions of section 0417 apply to formal fact-finding bodies.

0510 ARGUMENTS

The provisions of section 0428 apply to formal boards of investigation. If, however, the junior member of the board is designated or acts as counsel for the board, he shall not make an argument. In this event, only the parties or their counsel may make argument.

0511 SAMPLE RECORD

a. *General.* The sample record of proceedings of a court of inquiry set forth in Appendix A-4-d may be used as a guide in the conduct of proceedings and preparation of the record of a formal board of investigation, with appropriate changes in terminology (for example, "board" must be substituted for "court" and "senior member" for "president"). Nothing in the sample record, however, shall be considered as authority to depart from the provisions of this chapter. Deviations from the sample proceedings, when not inconsistent with the provisions of this chapter may be made when appropriate and necessary to execute more effectively the primary fact-finding mission. When procedural steps are taken which are not covered in the sample record, the provisions of appendix 8, MCM may be consulted for general guidance.

b. *Privacy Act compliance*. When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

PART B–FORMAL ONE OFFICER INVESTIGATIONS

0512 COMPOSITION AND APPOINTMENT

A formal one officer investigation shall consist of one commissioned officer and may be convened in writing by any officer in command. See sections 0206b and 0502. Whenever practicable, the investigating officer should be senior to any designated party. See section 0502d. Counsel for the investigation may be appointed, but is not required.

0513 PROCEDURE

A formal one officer investigation is governed by the rules and principles prescribed for a formal board of investigation insofar as those rules and principles can be applied to a single officer investigation. The mission of the officer must be given primary consideration in the determination of procedural questions not covered by the sources of guidance. The investigating officer shall sign the record. The investigating officer shall fully comply with the Privacy Act of 1974 prior to requesting an individual to supply personal information. See section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

0514 CHALLENGE

A party has no right of challenge in a formal, one-officer investigation. If a party contends that the investigating officer cannot approach the fact-finding mission with an open mind, the facts should be reported to the convening authority for appropriate action. The officer designated to conduct the one-officer investigation is not subject to examination by the party.

Chapter VI

INFORMAL INVESTIGATIONS

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0601 COMPOSITION AND APPOINTMENT

Informal fact-finding bodies may be composed either of a single investigator or of two or more members. The single informal investigator and members of an informal board of investigation may be commissioned or warrant officers, senior enlisted persons, or mature civilian employees of the Department of the Navy. If practicable, the member or members of an informal investigation should not be junior to any person whose conduct or performance of duty will be subject to inquiry. Ordinarily, counsel is not appointed for an informal fact-finding body.

0602 APPOINTING ORDER

a. *General.* Informal fact-finding bodies may be convened by either an oral or written order of any officer in command (see section 0206b). In any case in which other than commissioned officers are appointed, or in which the appointing order expressly convenes an informal board of investigation, the fact-finding body so convened will be an informal fact-finding body under this chapter. A sample appointing order is contained in Appendix A-6-a.

b. *Contents.* In every case the appointing order should direct the fact-finding body to report findings of fact. When opinions and/or recommendations are desired the appointing order should expressly direct their submission. In any case of doubt or ambiguity as to the scope and extent of the investigation desired, the appointing order should recite the specific purpose of the investigation and provide explicit instructions as to the scope of the inquiry. The appointing order may direct that testimony or statements of some or all witnesses be taken under oath and may direct that testimony of some or all witnesses be recorded verbatim. In any case in which it is directed that testimony be taken under oath and/or recorded verbatim, the convening authority should expressly indicate that the investigation is nonetheless "informal." In any case in which detailed instructions are provided to an informal fact-finding body, consideration should be given to the issuance of a written appointing order. An appointing order should contain directions in regard to compliance with the Privacy Act of 1974, Article 31 of the Uniform Code of Military Justice, and sections 0306 and 0606d(3) of this Manual.

0603 PARTIES

Parties may not be designated by the convening authority or by the fact-finding body in an informal investigation.

0604 OATHS

A single informal investigator and members of informal boards usually are not sworn. When an informal fact-finding body takes testimony or statements of witnesses under oath, it should utilize the oath prescribed in section 0415.

0605 PROCEDURES

Inasmuch as an informal fact-finding body does not perform the collateral function of affording a hearing (see section 0201b(2)), it is free to determine and utilize the most effective methods of seeking out, uncovering, collecting, analyzing, and recording all information which is or may be relevant to a determination of all the facts and circumstances of the subject under inquiry. For example, if a board, it may divide aspects, witnesses, or evidentiary facets of the inquiry among the members for individual investigation and development, holding no collective meeting until an initial review is made of all the information collected to determine its completeness. It may call witnesses before the assembled members to present testimony in a formal manner or it may obtain relevant information from the witnesses by informal personal interview, correspondence, telephone inquiry, or other means. In short, an informal fact-finding body may employ any method which it finds most efficient and effective in performing its investigative function.

0606 THE INVESTIGATION

a. *General.* Facts and circumstances of an incident or matter under investigation are most often proved or disproved by: (1) inferences drawn from real (tangible) evidence; (2) documentary evidence; and (3) testimony or statements of witnesses. In addition, some facts or circumstances may be of such common, indisputable knowledge that no need exists to obtain specific evidence to support them. In this latter category are, for example, general facts and laws of nature, general facts of history, the locations of major elements of the Navy or Marine Corps, the organization of the Department of Defense and its components, and similar items. This includes, but is not necessarily limited to, those matters of which judicial notice may be taken (see paragraph 147, MCM).

b. *Real evidence.* Whenever the condition, location, or other characteristic of an item of real evidence is of value in tending to establish the existence or non-existence of a fact, that item or a photograph, description, or other suitable reproduction thereof should be included in the report of investigation, together with the necessary statements of witnesses identifying the item and certifying to the accuracy of the reproduction. If the physical layout of a room, compartment, or other structure is relevant, the investigation should consider the desirability of including plans or charts of the space. If the interrelated location of items in a general area is of factual significance, maps, aerial photographs, or similar projections may be of value in the report. In addition, the investigator or board members should not overlook their own value as witnesses respecting real evidence. If a member observes an item and gains impressions therefrom not adequately portrayed by a photograph, chart, map, or other representation, he should record his impressions concerning the items and include such statement as an enclosure to the report.

c. *Documentary evidence.* Documentary evidence is that taken from records, documents, letters, diaries, reports, existing statements, and other written, printed, or graphic sources by which the existence or non-existence of a fact may be indicated. This type of evidence is often the best and most persuasive evidence available. Single investigators and boards should be alert to discover all such items which may be relevant to the matter under inquiry and to attach the originals or copies thereof to the report.

d. *Testimony or statements of witnesses.*

(1) *Witnesses not suspected of misconduct or improper performance of duty.* Ordinarily, statements of witnesses will be obtained during an informal interview in which the witness relates his knowledge and it is then reduced to writing and signed; however, in the discretion of the single investigator or board, witnesses may be called and their testimony elicited by means of recorded questions and answers. If a signed statement is obtained, the single investigator or board may assist the witness in preparing his written statement to avoid excessive inclusion of irrelevant material or the omission of important facts and circumstances which are within the knowledge of the witness. However care should be taken to ensure that the statement is phrased in the actual language of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or non-existence of material fact.

(2) *Witnesses suspected of an offense, misconduct, or improper performance of duty.* In the case of a witness suspected of an offense, see Article 31(b), UCMJ. If it appears probable that a prosecution of the individual for the suspected offense may ensue, then refer to Appendix A-1-n. Ordinarily the investigator or board should collect all relevant information from all available sources other than persons suspected of offenses, misconduct, or improper performance of duty before interviewing such persons. Before interviewing a person in the Armed Forces who is suspected of misconduct or improper performance of duty, the person concerned should be advised generally of the nature of the inquiry and of the possible effect of an ultimate adverse determination. Such person should then be given an opportunity to discuss the matter with someone not acting for the Government in connection with the investigation.

(3) *Witnesses suffering from a disease or injury.* A member of the Armed Forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, shall be advised that he has a statutory right not to sign such a statement and that he therefore may not be required to do so. See section 0306 of this Manual.

(4) *Privacy Act compliance.* When an individual is requested to supply personal information, it is mandatory that there be compliance with section (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a.

e. *Rules of evidence.* An informal fact-finding body is not bound by the formal rules of evidence applicable before courts-martial and may collect, consider, and include in the record any matter of reasonable believability or authenticity which is relevant to the matter under inquiry. In general, however, care should be taken to authenticate (indicate the genuineness of) real and documentary items or reproductions thereof enclosed with the report by certifications of correctness of copies or statements of authenticity, as may be appropriate. The statement of a witness should be signed by the witness or should be certified to be either an accurate summary, or the verbatim transcript, of oral statements made by him.

f. *Participation of an expert as a member.* A person possessing technical knowledge may be appointed to an informal fact-finding body either for full participation or for the limited purpose of utilizing his special experience. If appointed for this limited purpose, he need not participate in any aspect of the inquiry that does not concern his specialty. The investigative report in such cases will make clear any limited participation by a member.

g. *Classified material.* See section 0209c of this Manual.

0607 COMMUNICATIONS WITH CONVENING AUTHORITY

If at any time during the investigation it should appear, from the evidence adduced or otherwise, that circumstances exist in the light of which the convening authority might consider it advisable to enlarge, restrict, or otherwise modify the scope of the inquiry or to change in any respect any instruction provided in the appointing order, a report should be made to the convening authority. The convening authority may take such action on this report as he, in his discretion, deems appropriate.

0608 INVESTIGATIVE REPORT

a. *Form and content in general.* In all cases an investigative report shall be submitted in letter form. It shall consist of a preliminary statement, findings of fact, opinions and recommendations when so directed by the convening authority, and enclosures.

b. *Preliminary statement.* The purpose of the preliminary statement is to inform the convening and reviewing authorities that the requirements as to procurement of all reasonably available evidence and the directives of the convening authority have been met. After setting forth the nature of the investigation, it should set forth in detail the difficulities encountered in the investigation, if any; any limited participation in the investigation by a member; and any other information necessary for a complete understanding of the case. The itinerary of the investigator or board in obtaining information is not required. The preliminary statement does not obviate the necessity for findings of fact as to pertinent material matters. For example, despite expressions in both the subject and the preliminary statement that an investigation is concerned with the crash of an airplane and resulting fatal injuries to the pilot, the initial findings of fact should set forth in detail the description of the airplane, time and place of the accident, the identity of the pilot, etc.

c. *Findings of fact.* The findings of fact represent the evaluation of the evidence and information received and collected. These findings must be as specific as possible as to times, places, persons, and events. Each fact may be made a separate finding, or facts may be grouped into a narrative. It is for the fact-finding body to determine which method is the most effective in the presentation of a particular case.

d. *Opinions.* Opinions are the logical inferences or conclusions which flow from the facts. The investigation will express its opinions when directed to do so by the convening authority. For guidance as to the opinions normally required in specific situations, see chapters VIII and IX.

e. *Recommendations.* Recommendations will be made only when the convening authority has so directed in his order appointing the fact-finding body. If required, such recommendations as are specifically directed and those which appropriately flow from the findings of fact and expressed opinions shall be made. If trial by court-martial is recommended, a charge sheet, signed and sworn to by a member joining in the recommendation, shall be prepared and submitted as an enclosure to the investigative report. See paragraph 29, MCM. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter shall be prepared and forwarded as an enclosure to the investigative report; if a nonpunitive letter is recommended, a draft will be prepared and separately forwarded to the appropriate commander for issuance, but will not be included as a part of the investigative report. See Appendix A-1-a, A-1-b, and A-1-c.

f. *Enclosures.* The written appointing order, if any, will be the first enclosure. Subsequent enclosures will contain all the evidence developed by the investigation. Each statement, affidavit, transcript of testimony, photograph, map, chart, document, or other exhibit will be made a separate enclosure. The signatures of the board members to the basic report constitute authentication of all enclosures thereto; individual authentication or witnessing, however, is indicated in the situations dealt with in section 0606b, c and e.

g. *Signing and authenticating*

(1) All persons who participated in the investigation shall sign the investigative report. This includes all persons who participated in the investigation at the time of the findings, even though their participation was limited.

(2) If there are two members of an informal board of investigation and they cannot agree on findings of fact, opinions, or recommendations, the report shall be signed by the senior member. The other member shall, in a signed dissenting report, state clearly the parts of the report with which he disagrees, and his reasons therefor. If the informal board consists of three members, the majority shall provide the report of the board and the signed minority report of the dissenting member, stating his reasons for dissent, shall be included.

h. *Privacy Act compliance.* When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C.§ 552a) in accordance with section 0308 and Appendix A-3-a. The investigative report must reflect the foregoing compliance.

0609 SAMPLE REPORT

A sample informal investigative report is contained in Appendix A-6-b(1).

Chapter VIII

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0801 WHY MISCONDUCT – LINE OF DUTY INVESTIGATIONS

a. *Extension of enlistment.* An enlisted member of the naval service who is unable to perform his duties for more than one day because of intemperate use of drugs or alcoholic liquor or because of disease or injury resulting from his misconduct is liable, after his return to duty, to serve for a period, that when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted (10 U.S.C. §972).

b. *Longevity and retirement multiplier.* Eligibility for increases in pay because of longevity and the amount of retirement pay to which a member may be entitled is dependent upon his cumulative years of "creditable service". An enlisted member who is unable to perform his duties for more than one day because of intemperate use of drugs or alcoholic liquor or because of disease or injury resulting from his misconduct is not entitled to include such periods in computing "creditable service" (paragraph 10104, Department of Defense Military Pay and Allowances Entitlements Manual–DODPM).

c. *Forfeiture of pay.* A member of the naval service on active duty who is absent from his regular duties for a continuous period of more than one day because of disease that is directly caused by and immediately follows his intemperate use of liquor or habit-forming drugs is not entitled to pay for the period of that absence. If pay is forfeited for more than one month, however, the member is entitled to $5.00 for personal expenses for each month that his pay is forfeited (10315c, DODPM). Pay is not forfeited for absence from duty caused by injuries. Pay is not forfeited for diseases not directly caused by and immediately following intemperate use of liquor or habit-forming drugs (paragraph 10315b, Department of Defense Military Pay and Allowances Entitlements Manual).

d. *Disability retirement and severance pay.* In order for members of the naval service who sustain permanent disabilities while on active duty to be eligible to receive certain retirement or severance pay benefits, the requirements of the applicable statutes must be met. One of these requirements is that the disability must not result from the member's "... intentional misconduct or willful neglect ..." and must not have been "... incurred during a period of unauthorized absence." 10 U.S.C. §§1201, 1203, 1204, 1206, and 1207. Physical evaluation determinations are made independently and are not controlled by misconduct-line of duty findings or conclusions recorded under the provisions of this Manual. They are instead controlled by regulations contained in the Disability Evaluation Manual (SECNAVINST 1850.4). As a practical matter, such determinations for physical review purposes must rest upon the evidence available. Generally this will be those facts which have been officially recorded and are on file within the Department of the Navy. This would include reports and investigations submitted in accordance with the provisions of this Manual.

e. *Benefits administered by the Veterans' Administration.* In determining whether a veteran or his survivors or dependents are eligible for certain benefits, the Veterans' Administration makes its own determinations with respect to misconduct and line of duty. As a practical matter, these determinations must rest upon the evidence available and generally this will be those facts which have been officially recorded and are on file within the Department of the Navy. Statutes governing these benefits generally require that disabling injury or death be "service connected" which means that the disability was incurred or aggravated or that the death resulted from a disability incurred or aggravated "in line of duty" (38 U.S.C. §101). The statutory criteria for making such determinations are contained in 38 U.S.C. §105.

0802 WHAT CONSTITUTES LINE OF DUTY

a. *General rule.* For purposes of these regulations injury or disease incurred by naval personnel while in active service will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

(1) As a result of the member's own misconduct as determined under the regulations contained in this chapter;

(2) While avoiding duty by deserting the service;

(3) While absent without leave and such absence materially interfered with the performance of required military duties (see subsection d below);

(4) While confined under sentence of a court-martial which included an unremitted dishonorable discharge; or

(5) While confined under sentence of a civil court following conviction of an offense which is defined as a felony by the law of the jurisdiction where convicted.

b. *Active service defined.* "Active service" as used in this section includes full-time duty in the naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

c. *Presumption.* It is presumed that an injury or disease suffered by a member of the naval service was incurred in line of duty. Clear and convincing evidence is required to overcome this presumption.

d. *Unauthorized absence*

(1) Whether absence without leave materially interferes with the performance of required military duties necessarily depends upon the facts of each situation, to which must be applied a standard of reality and common sense. No definite rule can be formulated as to what constitutes "material interference." Generally speaking, absence in excess of twenty-four hours constitutes a material interference unless there is evidence to establish the contrary. Similarly, an absence of shorter duration will not be considered to be a material interference unless there is clear and convincing evidence to establish the contrary. A statement of the individual's commanding officer, division officer, or other responsible official, and any other available evidence to indicate whether an absence without leave constituted a material interference with the performance of required military duties, should be included in the record whenever appropriate.

(2) It should be noted that under 10 USC §1207 a member is ineligible for physical disability retirement or physical disability severance benefits from the Armed Forces if his disability was incurred during a period of unauthorized absence, regardless of the length of such absence and regardless of whether such absence constituted a material interference with the performance of his required military duties.

0803 WHAT CONSTITUTES MISCONDUCT

a. *Generally.* As used in this chapter misconduct is wrongful conduct. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support an opinion of misconduct it must be established by clear and convincing evidence that the injury or disease was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless disregard of the consequences. If a resulting injury or disease is such that it could have been reasonably foreseen from the course of conduct, it is said to be a "proximate result." The fact that the conduct violates a law, regulation, or order – or the fact that the conduct is engaged in while the individual is intoxicated – does not, of itself, constitute a basis for a determination of misconduct. Such circumstances should, however, be considered along with all other facts and circumstances in determining whether the conduct of the individual was grossly negligent and whether the incurrence of injury or disease was reasonably foreseeable as a probable result of such conduct.

b. *Presumption.* It is presumed that injury or disease suffered by a member of the naval service is not the result of his own misconduct. Clear and convincing evidence is required to overcome this presumption.

c. *Examples.* If an individual intentionally wounds himself with a firearm, the injury is due to his own misconduct. If an individual handles a firearm in a grossly negligent manner and thereby wounds himself, that too would be an injury due to his own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile which had gone out of control, the injuries would not be due to his own misconduct because they would not have been a reasonably forseeable result (proximate result) of the wrongful conduct in which the individual was engaged. In this latter example, the injuries are said to be the result of an independent intervening cause.

0804 RELATIONSHIP BETWEEN MISCONDUCT AND LINE OF DUTY

For purposes of these regulations, "misconduct" can never be "in line of duty." Hence a finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in line of duty." It is permissible, however, to find that an injury was incurred "not as a result of misconduct" and "not in line of duty." As an example, a member who is absent without authority may be injured by a felonious assault or struck by a vehicle driven by a drunken driver. Obviously the injury was incurred through no fault of the member, but if the absence materially interfered with the performance of his required military duties a finding of "not in line of duty" must result. Accordingly, the three possible combinations of findings are as follows:

a. "In line of duty" and "not due to the member's own misconduct;"

b. "Not in line of duty" and "not due to the member's own misconduct;" or

c. "Not in line of duty" and "due to the member's own misconduct."

0805 WHEN MISCONDUCT – LINE OF DUTY DETERMINATIONS REQUIRED

In each case in which a member of the naval service incurs an injury which might result in a permanent disability or which results in his physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct must be made.

0806 RESPONSIBILITY TO ORDER INVESTIGATIONS

a. *Members of the naval service.* It is the responsibility of the commanding officer or officer in charge of the individual concerned at the time of incurrence of an injury, disease, or death to convene the necessary investigation or to take other appropriate action as required by this chapter. If the command is an afloat command, the investigation of incidents occurring ashore may be conducted by another appropriate command when the afloat command so requests and certifies that conduct of the investigation by the afloat command would not be feasible. The provisions of section 0207 of this Manual should be followed if the incident to be investigated occurs at a place far removed from the location of the command which has responsibility to investigate or if the incident involves the injury or death of individuals of more than one command. When naval personnel from more than one command are injured or die in an incident which should be investigated under these regulations, a single investigation of the matter should be conducted whenever practicable. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, the area coordinator, or the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, shall resolve any issue as to the appropriate command to conduct the investigation and shall ensure that any required investigation is made. The commanding officers or officers in charge of the personnel involved shall furnish the authority coordinating the matter with the information mentioned in section 0207b of this Manual. If a member of the naval service is injured at a place distant from his command and is admitted to a naval hospital, the commanding officer of the hospital shall, if no investigation is being made of the incident, promptly report the matter to the area coordinator or designated subordinate commander who shall take action to ensure that any required investigation is made.

b. *Members of other armed services.* Whenever a member of an armed service other than the naval service is injured, dies, or incurs disease under circumstances that would warrant investigation under these regulations, and it would be appropriate for an officer in command of an activity of the Department of the Navy to convene an investigation (*e.g.*, the individual is attached to a naval activity or is being treated in a naval medical facility), the nearest command of the parent service of the individual shall be notified. If requested, an appropriate investigation under these regulations shall be convened and the report thereof forwarded in accordance with the request. No further action need be taken within the Department of the Navy.

0807 MENTAL RESPONSIBILITY

a. *General rule.* A member may not be held responsible for his acts and their forseeable consequences if, as the result of mental defect, disease, or derangement, he was unable to comprehend the nature of such acts or to control his actions. Additionally, a member may not be held responsible for his acts or their forseeable consequences if, as the result of a mental condition not amounting to a defect, disease, or derangement and not itself the result of prior misconduct, he was unable to comprehend the nature of such acts and to control his actions. Thus, an injury which was the proximate result of acts performed while the member injured was suffering impairment of his mental faculties as the result of voluntary ingestion of a hallucinogenic drug would be deemed to have been incurred as the result of the member's own misconduct. Certain properties of such drugs are notorious and their use is prohibited by article 1151, U.S. Navy Regulations; hence the impairment would support a finding of misconduct.

b. *Presumption.* In the absence of evidence to the contrary, there is a presumption that all members are mentally responsible for their acts. This presumption makes it unnecessary in the majority of cases that an administrative fact-finding body seek evidence that a member was mentally responsible at a certain time unless credible evidence, is developed or discovered tending to indicate that he was not mentally responsible at that time. Such evidence may consist of circumstances attending certain acts; evidence of previous abnormal, irrational, or aberrant behavior; expert opinion evidence of mental illness; or other evidence directly or indirectly tending to indicate lack of mental responsibility. In any case in which a question of the mental responsibility of a member is raised by the facts developed or by the nature of the incident, the presumption of mental responsibility ceases to exist and the preponderance of information in the investigation must clearly and convincingly establish the member's mental responsibility before the line of duty presumption discussed in section 0802c can be overcome and thus authorize a determination that an injury or disease was incurred as a result of the member's own misconduct.

c. *Suicide attempts.* In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, is considered to create a strong inference of lack of mental responsibility. In cases of bona fide suicide attempts, therefore, further evidence must be sought on the question of mental responsibility, including, where warranted, expert psychiatric evaluation. If there is no reasonable and adequate motive for suicide supplied by the evidence, the suicide attempt will be sufficient to rebut the presumption of mental responsibility and the determination of whether the attempt was misconduct must then necessarily rest upon other evidence. Intentional self-inflicted injury, not prompted by a serious suicidal intent, is at most a suicidal gesture and such injury, unless lack of mental responsibility is otherwise shown, is deemed to be incurred as the result of the member's own misconduct.

0808 INTOXICATION AND DRUG ABUSE

a. *Intoxication.* An injury incurred as the proximate result of prior and specific voluntary intoxication is incurred as the result of misconduct. In order for intoxication alone to be the basis for a determination of misconduct respecting a related injury, there must be a clear showing that the member's physical or mental faculties were impaired due to intoxication at the time of the injury, the extent of the impairment, and that the impairment was a proximate cause of the injury. Intoxication (impairment) may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor. For a further description of drugs and drug abuse, see article 1151 of U.S. Navy Regulations.

b. *Alcohol and drug induced disease.* Inability to perform duty resulting from disease which is directly attributable to a specific, prior, proximate, and related intemperate use of alcoholic liquor or habit-forming drugs is the result of misconduct. See 37 USC 802. Habituation may or may not be associated with a specific inability to perform duty which is directly due to the specific and proximate use of alcohol or drugs, but only the period of actual inability to perform duty directly related to the specific and proximate use of alcohol or drugs may be charged as time lost due to misconduct. Time spent in evaluating habituation without specific inability to perform duty shall not be charged as time lost due to misconduct.

0809 MEDICAL AND DENTAL TREATMENT

a. *Refusal of treatment.* If a member unreasonably refuses to submit to medical, surgical, or dental treatment, any disability that proximately results from such refusal shall be deemed to have been incurred as a result of the member's own misconduct. See article 18-15, Manual of the Medical Department.

b. *Venereal disease.* Any disability resulting from venereal disease shall not support a misconduct finding if the member has complied with regulations requiring him to report and receive treatment for such disease. See article 22-18, Manual of the Medical Department.

0810 SPECIAL CONSIDERATIONS IN DEATH CASES

a. *When fact-finding body required.* A fact-finding body (either formal or informal), must be convened in the following situations:

(1) In any case in which the death of a member of the naval service occurred other than from natural causes, and particularly all apparent suicides (see paragraph 6-107b, OPNAVINST 5510.1E)(for deaths resulting from aircraft accidents, see section 0902);

(2) In any case in which civilians or other non-naval personnel are found dead on a naval installation under peculiar or doubtful circumstances unless the incident is one over which the Naval Investigative Service has exclusive jurisdiction. (See section 0212 of this Manual; SECNAVINST 5520.3 series; and paragraph 6-110, OPNAVINST 5510.1E (Security Manual)).

b. *Findings concerning misconduct and line of duty prohibited.* While it is important that all significant and relevant facts be recorded in a timely manner in any of the situations described in subsection a above, it should be noted that no survivor's benefit statute administered by the Department of the Navy is conditioned upon a misconduct-line of duty finding. To express recommendations or findings concerning misconduct or line of duty in death cases serves no useful purpose and such expressions are not desired by the Veterans' Administration, which makes its own findings. Accordingly, fact-finding bodies will express no opinion concerning misconduct or line of duty in death cases. Nor shall the convening authority or reviewing authorities enter any finding in this regard. If such a recommendation and/or finding has been recorded inadvertently or recorded after the injury but before death occurred, the record need not be returned for correction. Reviewing authorities should note the error and indicate its lack of validity in the forwarding endorsement. In any death case in which the record contains an adverse finding or opinion with respect to line of duty or misconduct, it is proper for reviewing authorities to comment and/or to enclose additional data which may tend to counter such finding or opinion.

c. *Death as a result of enemy action.* No report to the Judge Advocate General is required in the case of a death occurring as a result of enemy action. However, a fact-finding body should be convened, and the record forwarded in any case in which peculiar or doubtful circumstances are involved. Because a number of commercial life insurance policies contain certain restrictions and/or certain types of double indemnity provisions, it is desirable to ensure that the essential facts are recorded while witnesses are known and available. To the extent feasible, the facts reported should permit determinations as to whether death resulted from accidental causes, natural causes, or enemy action.

d. *Inquest duties.* A fact-finding body ordered to investigate the death of a member of the naval service, or of any person found dead on a naval installation, shall perform the duties of an inquest if the death was suffered under peculiar or doubtful circumstances. After convening, the fact-finding body will proceed at the first available opportunity to the place where the body may be, carefully identify it, and note the surroundings, if pertinent. Release of the remains of deceased personnel is to be expedited in all cases. Such medical witnesses as may be available shall be interviewed or their official reports obtained, including, whenever possible, evidence from the doctor who performed the autopsy if one was made, or a doctor who assisted or witnessed such autopsy. The fact-finding body will ascertain from these medical witnesses the exact condition of the body and the medical opinion as to the cause of death. The date of death shall be stated as a fact or as an opinion with the time of death fixed as precisely as the evidence permits. Copies of the autopsy protocol and the death certificate shall be appended as enclosures to the record.

e. *Autopsies.* When death of a member of the uniformed services on active duty or active duty for training occurs under any of the circumstances set forth in article 17-18, Manual of the Medical Department and when an autopsy is authorized by the commanding officer upon advice of the fact-finding body or medical officer, and in other cases in which authorization from proper authority has been obtained, the appointed fact-finding body shall provide the medical officer designated to conduct the autopsy with a detailed preliminary report of circumstances surrounding the death. In those cases in which authorization for autopsy has been granted by other than the commanding officer, the medical officer shall be responsible for advising command authority that such authorization has been granted so as to facilitate the preliminary investigation and report thereof to the medical officer conducting the autopsy. Upon completion of the autopsy, the medical officer conducting the autopsy shall provide the fact-finding body with a copy of the preliminary autopsy findings as to the cause of death and, when completed, a copy of the final protocol. The fact-finding body shall provide the medical officer conducting the autopsy with a copy of the final investigative report. (See Appendix A-8-a which quotes article 17-18, Manual of the Medical Department).

f. *Letter reports.* In those death cases in which the appointment of a fact-finding body is not required by subsection a above, and yet it is considered that a record of the circumstances involved be maintained in the Office of the Judge Advocate General, a letter report may be used. An example of a letter report in a death case is contained in Appendices A-8-b(1) and A-8-b(2).

0811 WHEN CLAIMS OR OTHER MATTERS ARE INVOLVED

a. *Examination of reports.* Any report of injury of death should be carefully examined to see if potential claims by or against the Government may be involved. This is of special concern where medical care has been furnished and the Government may be entitled to recover third party medical claims. See chapter XXIV of this Manual concerning the requirements for processing such claims.

b. *Combining investigations.* There is no prohibition against combining misconduct-line of duty investigations with claims investigations. Facts elicited in a claims investigation may be sufficient and may be used as a basis for entering line of duty and not misconduct findings in the health record as authorized by section 0814b or in making the abbreviated reports as authorized by section 0814c.

c. *Forwarding advance copies.* Where investigations have been combined (or directed to fulfill more than one function) and there is need for retaining the original record at the command or reviewing level for such purposes as courts-martial, contractual disputes, claims, litigation, etc., the retaining command shall ensure that a legible advance copy with all enclosures is forwarded to the Judge Advocate General.

0812 SPECIAL CONSIDERATIONS PERTAINING TO RESERVISTS

See section 0911 of this Manual.

0813 RELATIONSHIP TO DISCIPLINARY ACTION

An adverse determination as to misconduct or line of duty is not a punitive measure. Disciplinary action, if warranted, shall be taken independently of any such determination. Similarly, a favorable determination as to misconduct and line of duty does not

preclude separate disciplinary action nor is such a favorable determination in any way relevant or binding on the issue of guilt or innocence of the member in a separate disciplinary proceeding. The loss of rights or benefits resulting from adverse determinations as to misconduct and line of duty may be relevant and, at the request of the accused, may be admissible as matters in extenuation and mitigation in a disciplinary proceeding.

0814 HOW FINDINGS ARE TO BE RECORDED IN INJURY CASES

a. *JAG Manual investigations.* A fact-finding body (either formal or informal) must be convened and the commanding officer must make findings concerning misconduct and line of duty in any case in which:

(1) The injury was incurred under circumstances which suggest that a finding of "misconduct" might result;

(2) The injury was incurred under circumstances which suggest that a finding of "not in line of duty" might result;

(3) There is a reasonable chance of permanent disability being involved and the commanding officer considers that the appointment of a fact-finding body is the appropriate means by which to ensure that an adequate official record is made concerning the circumstances surrounding the incident;

(4) The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers that the appointment of a fact-finding body is the appropriate means by which to ensure that an adequate official record is made concerning the circumstances surrounding the incident.

b. *Entry in health or dental record.* No fact-finding body need be convened and no report need be forwarded to the Judge Advocate General concerning misconduct and line of duty when:

(1) In the opinion of the medical officer (or representative of a medical department) as concurred in by the commanding officer, the injury is not likely to result in a permanent disability and was incurred "in line of duty" and "not as a result of the member's own misconduct";

(2) Appropriate entries to this effect have been made in the service member's health or dental record (see article 16-45 and 16-71, Manual of the Medical Department).

NOTE: In any case a summary report may be made to the Judge Advocate General in accordance with subsection c below if there appears to be any reason for maintaining a record in that office.

c. *Use of forms or letter reports*

(1) An injury report form and/or letter report (RCS JAG 5800-19) may be used in any case in which "line of duty" and "misconduct" findings are required by section 0805, and in which all of the following conditions are met:

(a) In the opinion of the medical officer (or representative of a medical department), concurred in by the commanding officer, the injury was incurred "in line of duty" and "not as a result of the member's own misconduct";

(b) A fact-finding body is not required under section 0814a and is not otherwise contemplated; and

(c) The reporting requirements of the Judge Advocate General are not fully satisfied by a health or dental record entry under section 0814b—for example, a health or dental record entry will not suffice where a permanent disability may be involved.

(2) Reports may be made to the Judge Advocate General using NAVJAG Form 5800/15 without a covering letter. See Appendix A-8-c which contains such a form completed for this purpose.

(3) Any accident reporting form including the Marine Corps Accident and Injury Report (NAVMC 10767) may be used in reporting injuries resulting from motor vehicle accidents. These forms must be forwarded with a letter report which includes the following information if it is not otherwise contained on the form:

(a) A specific statement that the injury was incurred "in line of duty" and "not as a result of the member's own misconduct";

(b) Name, rank or rate, and serial number of the medical officer or medical department representative who concurred in the line of duty findings;

(c) A statement as to the nature and extent of any injury and what, if any, permanent disability may be involved. See Section 0308 for advice required to be given by the Privacy Act.

d. *Example of the use of forms.* Appendix A-8-d and A-8-e demonstrate how to use Marine Corps Form NAVMC 10767 with an accompanying supplemental letter report.

e. *Action by officer exercising general court-martial jurisdiction.* The form or letter report which is directed to the Judge Advocate General under this section shall be forwarded via an officer exercising general court-martial jurisdiction, who will cause it to be examined by a judge advocate. Examples of recommendations of examining judge advocates are set forth in Appendix A-8f.

0815 MISCONDUCT AND LINE OF DUTY HEARINGS

a. *Action by convening authority.* In each case in which a member of the naval service has incurred an injury or contracted a disease and the circumstances are such that investigation by a fact-finding body was required and conducted under sections 0810a or 0814a, the convening authority of the fact-finding body, unless he returns the record or report for further inquiry, shall take one of the following actions:

(1) If a fact-finding body was directed to, and did inquire into, the circumstances surrounding the incurrence of an injury or the contraction of a disease, and the convening authority concludes that such injury or disease was incurred "in line of duty" and "not due to the member's own misconduct" (or that clear and convincing evidence is not available to rebut the presumption of line of duty and not misconduct), he shall express this conclusion in his action on the record of proceedings. This action may be taken regardless of whether it differs from or concurs with an opinion expressed by the fact-finding body.

(2) If the member involved was designated a party before a formal fact-finding body and was fully accorded his rights as such, and if the fact-finding body was directed to, and did inquire into, the circumstances surrounding the incurrence of an injury or the contraction of a disease, the convening authority shall express his conclusions concerning misconduct and line of duty in his action on the record of proceedings. Any of the permissible findings described in section 0804 may be made regardless of whether they differ from or concur with opinions expressed by the fact-finding body.

(3) If the member was not designated a party before the fact-finding body, or if having been so designated, he was not fully accorded his rights as such, and if, upon review of the record or report of the fact-finding body, the convening (or higher) authority has substantial doubt that the injury or disease of the member was incurred in line of duty, he shall afford the member a hearing or shall forward the record or report to the command to which the member is attached so that a hearing may be afforded. The hearing in such a case shall include the following elemental requirements:

(a) The member shall be advised that questions have arisen concerning the circumstances under which he incurred an injury or disease and that line of duty and misconduct determinations must be made;

(b) If the member is suspected of having committed an offense, he shall be so advised as required by Article 31(b) UCMJ;

(c) The member shall be advised that he has the right not to give information regarding the origin,

incurrence, or aggravation of an injury or disease that the member may have. See section 0306.

(d) Any statement, record, or other evidentiary matter considered by the convening authority shall be made available for inspection by the member;

(e) The member shall be given full opportunity to present any relevant matter in refutation, explanation, rebuttal, or otherwise respecting the incurrence of the injury or disease. A reasonable period of time shall be provided to the member for this purpose.

(f) The member shall be provided a Privacy Act statement in accordance with section 0308 and Appendix A-3-a.

b. *Action by officer exercising general court-martial jurisdiction.* Unless the convening authority is empowered to convene general courts-martial, the record or report shall be forwarded to an officer empowered to convene general courts-martial having a judge advocate attached to his command. This officer may take any action on the report that could have been taken by the convening authority. With respect to conclusions concerning misconduct and line of duty, he shall indicate his approval, disapproval, or modification of such conclusions unless he returns the record for further inquiry. See section 0210 of this Manual. A copy of this action shall be forwarded to the commanding officer of the member concerned so that appropriate entries may be made in his service and medical records. Reviewing authorities subsequent to the officer exercising general court-martial jurisdiction need neither comment nor record approval or disapproval of the prior actions concerning line of duty and misconduct.

0816 RELATION TO SAFETY INVESTIGATIONS

Safety investigations and reports required by OPNAVINST 5102.1 are separate and independent of investigations and reports under the JAG Manual.

0817 CHECK LIST FOR FACT-FINDING BODIES

The following is provided as a convenient check list of matters which should be included (as applicable) in any report of a fact-finding body appointed to inquire into and make recommendations concerning misconduct and line of duty under the provisions of this chapter.

a. The complete name, grade or title, service or social security number, service or occupation, station or residence of all persons, military and civilian, killed or injured as an incident of the event under investigation. See section 0308 for advice required to be given by the Privacy Act.

b. All facts leading up to and connected with an injury, disease, or death.

c. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquests or medical examiners' reports, and pathological, histological, and toxicological studies.

d. Complete information concerning the site and terrain at which the incident in question occurred; and photographs, maps, charts, diagrams, or other exhibits which may be deemed helpful to a complete understanding of the incident.

e. All pertinent facts with respect to the duty, leave, liberty or unauthorized absence status of an individual at the time of the incident resulting in his injury or death.

f. When the person involved is a member of a reserve component of the Navy or Marine Corps, complete information as to his status in relation to extended active duty, active duty for training, or inactive duty training (or travel to and from such duty) at the time of the incident.

g. Complete information as to the nature and extent of all injuries to naval personnel and the place and extent of any hospitalization resulting therefrom. Include costs when civilian facilities are used.

h. When relevant, evidence regarding the state of alcohol, drug, or fumes, gas, or vapor intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident. Evidence as to the individual's general appearance and behavior, his rationality of speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be obtained and recorded. Efforts shall be made to determine the quantity and nature of the intoxicating agent used and the period of time over which used by the person. Results of any blood, breath, urine, or tissue tests for the intoxicating agent should also be obtained and submitted as exhibits.

i. When material, evidence regarding the mental competence or impairment of the deceased or injured person. In all cases of suicide or attempted suicide, all possible evidence bearing on the mental condition of the deceased or injured person shall be obtained. This will include all available evidence as to his social background, his actions and moods immediately prior to the suicide or the suicide attempt, any troubles which might have motivated the incident, and any pertinent examination or counseling by specially experienced persons.

j. Documentation evidencing that each enclosure containing personal information solicited from an individual is in compliance with the Privacy Act of 1974. See section 0308 and Appendix A-3-a.

k. Documentation that statements solicited from an injured service member respecting the incurrence or aggravation of his disease or injury are in compliance with section 0306.

Chapter IX

INVESTIGATIONS OF SPECIFIC TYPES OF INCIDENTS

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0901 DATA REQUIRED IN EACH JAG MANUAL INVESTIGATION

a. *General.* By whatever method evidence is obtained, the JAG Manual investigation is required to ascertain dates, places, persons, and events definitely and accurately. The day, month, year, and when pertinent, the time, of the incident or circumstances in question should be designated with particularity. The place or places involved should be specifically reported, and all persons involved should be specifically reported, and all persons involved should be properly identified by full name, title, business or profession, and residence, if a civilian; or full name, grade, service, duty station, and service number, if a member of the Armed Forces.

b. *Omissions.* Failure to observe these simple rules often results in the submission of an incomplete word picture of the transaction or event being investigated and frequently necessitates return of the record for further investigation.

c. *Aids.* Diagrams, charts, and maps should be included in the investigative record when such representations are deemed essential to provide the reviewing authorities with an accurate understanding of the incident or transaction being investigated. Photographs should be taken for inclusion in those cases in which word expression is deemed insufficient to illuminate the circumstances and/or the damage attending the event in question. Illustrations depicting the nature of the roadway or other site of an incident may be helpful to an understanding of the case.

d. *Factual basis.* All findings of fact should be supported by evidentiary enclosures, written statements by the investigating officer describing matters personally observed and learned by the investigating officer, are convenient means to document facts and, when appropriate, shall be made enclosures.

e. *Privacy Act compliance.* The JAG Manual investigation must be conducted in compliance with the Privacy Act of 1974, and the JAG Manual investigative record must demonstrate the compliance. See section 0308 and Appendix A-3-a.

0902 AIRCRAFT ACCIDENTS

a. *General*

(1) Aircraft accidents and other mishaps of various degrees of severity are investigated by one or more investigating bodies for various specific purposes in accordance with existing instructions and in fulfillment of legal requirements or inherent responsibilities of command and management.

(2) For the sole purpose of safety and accident prevention, the Chief of Naval Operations issues special instructions (OPNAVINST 3750.6 series) for the conduct, analysis, and review of investigations of aircraft mishaps. To avoid confusion with others, those investigations are known as Aircraft Accident Reports (AAR) and Aircraft Mishap Investigations.

(3) In every instance in which an aircraft mishap results in death or serious injury; extensive damage to Government property; or in which there is a possibility of a claim, either by or against the Government, an appropriate fact-finding body shall be ordered to determine the cause and responsibility for the mishap, the nature and extent of any injuries, a description of all damage to property, and all other attendant circumstances. Such fact-finding body may also be convened to inquire into and report on any other mishap, near mishap, or circumstance whenever, in the discretion of the commanding officer or superior authority, it appears that such fact-finding body will provide information which may be required by, or be of interest to, the Department of the Navy. The fact-finding bodies and their activities dealt with in this subsection are referred to as *JAG Manual investigations* and are in addition to and separate from the aircraft accident safety investigations identified in subsection (2) above.

(4) A JAG Manual investigation is not required for aircraft accidents or other aircraft mishaps incident to direct enemy action. An aircraft accident or aircraft mishap is incident to direct enemy action when it is due to hostile action or to a cause unknown in a hostile area. The foregoing does not dispense with the requirement of a JAG Manual investigation solely because an aircraft accident or

other aircraft mishap occurs in the course of a combat operation, such as an aircraft crash when taking off or returning to an airfield or aircraft carrier not caused by hostile forces. Further, a JAG Manual investigation is not precluded when deemed appropriate by operational or administrative commanders; nor does the foregoing affect the inherent right of such commanders to investigate in order to gather, evaluate, or verify the facts of a combat engagement when enemy action has resulted in the loss of, or damage to, a naval aircraft. This subsection relates to JAG Manual investigations only and does not affect any other reporting requirement, such as reports required under articles 0739 and 0743, U.S. Navy Regulations, 1973. See also section 0203d of this Manual.

b. *Relationship to aircraft accident safety investigations*

(1) A JAG Manual investigation of an aircraft accident or mishap is an "other" investigation as referred to in the Joint Directive issued under the OPNAVINST 3750.16 series in implementation of section 702 of the Federal Aviation Act of 1958 49 USC 1442. This directive clearly distinguishes between aircraft accident safety investigations and "other" investigations; stipulates that they shall be conducted separately and independently; and specifies certain limitations and restrictions affecting "other" investigations with respect to persons involved in safety investigations, evidence obtained thereby, and the report thereof.

(2) Although membership on an aircraft safety investigation board cannot *per se* bar an individual from appearing as a witness before a JAG Manual investigation of the same incident, such appearance is manifestly undesirable and should be avoided if possible. If such appearance is essential, see OPNAVINST 3750.16 series.

(3) While the aircraft safety investigation and the JAG Manual investigation must be conducted separately and independently, each shall have access to all real evidence and shall have separate opportunities to question and to obtain statements from all witnesses.

(4) In conducting the JAG Manual investigation care shall be exercised to respect the privileged character of the aircraft safety investigation. No witness shall be questioned as to whether he has participated in, or testified before, any aircraft safety investigation.

(5) In any case in which there is a possibility that the witness will be called upon to testify before both types of investigatory bodies it is imperative that an explanation be made with respect to the apparent duplication. This is particularly important with respect to the non-military witnesses. The explanation should include the following:

a. The differing objectives of the two investigations;

b. Why the procedures vary;

c. The necessity for preserving the privileged character of the aircraft safety investigation;

d. That since neither command nor administrative action may alter the privileged character of statements given to the aircraft safety investigation such statements will not be available to the JAG Manual investigation from any official source.

c. *Data required.* The scope and details of the fact-finding function to be performed pursuant to this section will vary according to the nature and circumstances of the particular incident in question. The report of the fact-finding body should include, but not be limited to, data on the following matters, insofar as the items are pertinent to the occurrence under investigation:

(1) The background, history, training, and experience of the pilot, as well as his degree of familiarity with the type of aircraft involved.

(2) The sociological, psychological, and human factors related to the accident.

(3) The type, duration, and purpose of the flight; the authorization for the flight; the briefing of

the pilot; and any other pertinent information in regard to the particular flight.

(4) The prevailing weather conditions which might have affected the flight.

(5) The preflight history of the aircraft; compliance or non-compliance with pertinent technical directives, including flight hours since the last overhaul; discrepancies noted on recent "yellow sheets" (OPNAV Form 3760/2; OPNAVINST 3710.7 series); VIDS/MAF forms; OPNAVINST 4790.2 series; and flight hours since the last intermediate check.

(6) Type, model, and bureau number of aircraft involved.

(7) A description of flight path and maneuvers of the aircraft during flight, including manner of descent and impact.

(8) The positions of external control surfaces, landing gear, canopy, etc., during the flight.

(9) The presence, condition, and use of safety, communication, escape, and survival equipment.

(10) A post-accident examination of the aircraft and a detailed description of all damage to the aircraft, including wreckage diagrams, disassembly and inspection reports, wreckage photographs, and data on engine, fuselage, and control surfaces.

(11) An examination of the scene of the accident with complete information as to its precise location and a detailed description of the extent of any damage to Government or private property.

(12) A description of rescue operations employed.

(13) Instructions in effect at the time of the accident concerning procedures relating to the particular flight (including applicable local and regional flight rules governing the flight).

(14) The status of all personnel aboard, i.e., whether pilot, co-pilot, member of the crew, or passenger.

(15) Performance data on aircraft in question under prevailing wind, weather, and temperature conditions.

(16) All deaths resulting from the accident and the precise medical cause thereof (substantiated by medical records, autopsy, and death certificate).

(17) The cause, nature, and extent of any injuries suffered as a result of the accident (substantiated by medical records), including misconduct-line of duty determinations in the case of injuries to naval personnel, if directed.

(18) The role of other aircraft in the occurrence.

(19) The roles of supervisory, support, and controlling personnel.

d. *Other Federal agency participation.* Participation of National Transportation Safety Board (NTSB) or the Federal Aviation Agency (FAA) is covered by OPNAVINST 3750.16 series.

0903 VEHICLE ACCIDENTS

a. *Basic matters.* If the subject matter of the investigation involves any motor vehicle accident, the following facts are important and should be covered in the fact-finding report, if applicable:

(1) Speed of vehicles involved as evidenced by testimony of witnesses, skid marks, condition of roads, and the damage to the vehicles.

(2) Road factors, including all road characteristics, natural obstructions to the driver's vision, and traffic signs.

(3) Other vehicles, including any part played by them in creating the conditions that resulted in the accident.

(4) Traffic conditions at the scene of the accident and their effect on the accident.

(5) Traffic laws and regulations in force pertinent to the accident, including required safety devices.

(6) Light and weather conditions and their effect on driving conditions.

(7) Mechanical condition of the vehicles involved.

(8) Physical condition of the driver, or drivers including sobriety, fatigue and exhaustion, and the effect of their physical condition on the accident.

(9) Driving experience of the driver or drivers.

(10) Safety devices installed and whether they were being used at the time of the accident.

b. *Passengers.* The following information should be provided with respect to passengers:

(1) Conduct of passengers and the effect thereof on the driver.

(2) Prior relationship of passengers and driver which is relevant to knowledge by any passenger of any impairment of the driver (which may have caused the accident) at the time the passenger entered or had a reasonable opportunity to leave the vehicle.

(3) Safety devices installed and whether they were being used at the time of the accident.

0904 EXPLOSIONS

a. *General.* The report of the fact-finding body should cover the cause and responsibility for the explosion, the extent of injuries to personnel, the damage to property and probable monetary amount thereof, and all other relevant circumstances.

b. *Specific facts.* The following information should be included in the record, if applicable.

(1) Date, time of day, place, and probable causes.

(2) Kind of explosives or ammunition and the quantity involved.

(3) Time intervals, if measurable, between explosions.

(4) Existence of barricades and effect upon them; the existence of any hill, forest, or other object intervening between the site of the explosion and the areas affected.

(5) Weather and atmospheric conditions and their effect on shock waves.

(6) Range and extent of damage. Where feasible, maps or photographs should be included, upon which all or most of the following data may be shown:

(a) Radius of complete destruction.

(b) Radius of structural damage beyond economical repair.

(c) Radius of repairable structural damage.

(d) Radius of general glass breakage.

(e) Distances to which significant missiles were projected (include kind and weight).

(f) Distance between locations, if explosions occurred at more than one location.

(g) Distance between ships and other vessels or structures affected and distances to nearby ships or structures not affected.

(7) Approximate shape and dimensions of crater, including depth and kind.

(8) Personnel involved and the extent of their involvement.

(9) If claims are involved, see applicable chapters XII and XX through XXIV.

0905 LOSS OR STRANDING OF A SHIP OF THE NAVY

a. *General.* The evidence from which the findings of fact are derived should include all pertinent logs, charts, orders, and regulations. The condition of the sea and weather, the rate and direction of the tidal stream, the time of the tide, and other factors involving natural elements should be stated. Any mechanical or electronic deficiency or failure in the ship pertinent to the loss or stranding should be investigated and reported. The primary objects of the investigation should be to ascertain the cause and individual responsibility for the loss or stranding and the damage resulting therefrom. See section 0907b concerning loss or stranding as a result of enemy action.

b. *Determination of ship's position.* Investigation should be made as to whether the proper chart provided by the Department of the Navy was used, whether the position of the ship at the last favorable opportunity was accurately determined and, if not, when it was last accurately ascertained. In appropriate cases, a competent officer, not attached to the ship involved and not a member of the fact-finding body, should be directed to work up the reckoning of the ship from the data available to enable the investigative body to fix the true position of the ship at the time of her taking the ground. The officer appointed to perform this duty should be called as a witness and, upon the offering of his written work in evidence, be subject to cross-examination as to the accuracy thereof. The track of the ship so determined, as well as her position when aground, as determined by cross-bearings taken from the log book or by other means, should be laid off on the chart by which she was navigated.

c. *Navigation in pilot waters.* If land was sighted and the distance estimated before the ship struck, it should be ascertained what steps were taken during the time land was in sight to correct the ship's course and speed. The extent to which applicable instructions (e.g., those contained in Coast Pilot or Sailing Directions) were observed should be particularly noted.

d. *Procedure in case of loss of a ship.* Whenever inquiry is made into the loss of a ship, the investigative body should call for the official report of the commanding officer of such ship containing the narrative of the disaster. This report should be read to the investigating body in the presence of the commanding officer and of such of the surviving officers and crew as can be assembled and should be appended to the record or report of investigation.

0906 COLLISIONS

a. *General.* In the event of a collision involving a naval vessel or damage caused by a naval vessel to any shore structure, fish net or trap, buoy, or similar foreign object which results in property damage or personal injury, the appropriate officer in command should ensure that a fact-finding body is ordered to determine the responsibility for the accident, the extent of injuries to personnel, the damage and probable cost thereof, and other attendant circumstances. The record of a fact-finding body appointed to investigate a collision should contain the name, grade, class of service, permanent home address, length of service, and marine experience of each material witness to the collision. See section 1207e with respect to the possible use of a letter report in minor cases which are of interest only from an admiralty claim standpoint.

b. *Collision with vessels or damage caused by naval vessels to property other than that of the U.S. Navy.* The appropriate officer in command should, in addition to complying with the admiralty claims procedure (chapter XII), ensure that an appropriate fact-finding body is ordered to investigate the incident. No officer, pilot, or agent of a non-Navy vessel involved in a collision with a naval vessel shall be designated a party or accorded the rights of a party without the concurrence of the Secretary of the Navy (JAG). Such person may be afforded an opportunity to appear and give evidence as a witness, and while testifying he may be represented by counsel. Neither the witness nor his counsel has a right to be present when other witnesses testify. The non-Navy witness or his counsel may be furnished only with a copy of that portion of the record containing his testimony and any other matter derived solely from such testimony. Ordinarily, the proceedings of the fact-finding body ordered to investigate the incidents described in the heading of this subsection should be in closed session in order to safeguard the interests of the Government. See section 1207e with respect to the possible use of a letter report in minor cases which are of interest only from an admiralty claim standpoint.

c. *Damage to Navy vessels or property caused by non-Navy vessels.* Incidents involving damage to Navy vessels or property caused by non-Navy vessels or floating objects should be investigated in accordance with subsections a and b above.

d. *Other sources of guidance.* See (Admiralty Claims), chapter XII.

0907 ACCIDENTAL OR INTENTIONAL FLOODING OF A SHIP

a. *Scope of investigation.* In cases of grounding, collision, or structural or material failure which involve accidental or intentional flooding of parts of a naval ship, the report of the fact-finding body should contain the following information:

(1) Draft forward and aft and list of ship before and after damage. These drafts may have to be estimated from drafts recorded on departure from last port and on arrival in port after damage.

(2) General distribution and amounts of variable weights, particularly fuel and water, before damage.

(3) Compartments flooded and the rapidity of flooding of individual compartments, if available.

(4) Cause of flooding of each compartment; that is, whether the flooding was due directly to damage to structure or due to deficiencies of structure or closures such as doors, hatches, valves, vent closures, etc.

(5) The material condition of readiness in effect at the time of the casualty.

(6) Summary of steps taken to control damage and to correct list or trim.

(7) Performance of installations, such as flood control, automatic door and hatch closures, etc.

(8) Extent of damage (hull, machinery, electronics supplies, cargo, etc.) including description and value thereof.

b. *Enemy action.* A JAG Manual investigation is not required for loss, damage, or flooding of a naval vessel or craft as a direct result of enemy action. The loss, damage, or flooding of a naval vessel or craft is a direct result of enemy action when it is due to hostile action or to an unknown cause in a hostile area. The foregoing does not dispense with the requirement of a JAG Manual investigation solely because the loss, damage, or flooding occurs in the course of combat operation, such as a collision when leaving port or returning not caused by hostile forces. Further, a JAG Manual investigation is not precluded when deemed appropriate by operational or administrative commanders; nor does the foregoing affect the inherent right of such commanders to investigate in order to gather, evaluate, or verify the facts of a combat engagement when enemy action has resulted in loss, damage, or flooding of a naval vessel or craft. This subsection relates to JAG Manual investigations only and does not affect any other reporting requirement, such as reports required under articles 0739 and 0743, U.S. Navy Regulations, 1973. See also section 0203d of this Manual.

0908 PRETRIAL INVESTIGATION

a. *Investigation of charges.* If practicable, when a court of inquiry or formal fact-finding body is convened to investigate an incident which is likely to result in general court-martial charges, it should be provided with sworn charges and directed to investigate the charges in accordance with Article 32, UCMJ and paragraph 34, MCM.

b. *Investigation prior to charges.* If a JAG Manual investigation of the subject matter of an offense was conducted before the accused was charged with the offense, the investigation may be used in lieu of an investigation of the charges under Article 32, UCMJ providing:

(1) The accused was present at such investigation and was:

(a) advised of the offense of which suspected and of his right to be represented by counsel (see section 0304b) at the investigation;

(b) informed of his rights under Article 31, UCMJ;

(c) given full opportunity to cross-examine witnesses against him if they were available; and

(d) given full opportunity to present anything he desired in his own behalf, either in defense or mitigation;

(2) All statements of witnesses were given under oath or affirmation unless such requirement was waived by the accused; and

(3) The accused, after being informed of the formal charge against him, did not demand further investigation of the charges. In the event of such demand, opportunity shall be given to the accused to recall witnesses for further cross-examination and to offer any other evidence in his behalf. See paragraph 33e(1), MCM. This may be done by additional proceedings of the court of inquiry or formal investigation, or by referring the case to a single investigating officer to hear and record such

additional evidence, except that a member of a court of inquiry, a board, or a single investigating officer who previously recommended disciplinary action or who has become an accuser may not conduct the additional proceedings. The proceedings of such further investigation shall be appended to, and made a part of the original record of the initial court of inquiry or formal investigation.

0909 LOSS OF GOVERNMENT FUNDS OR PROPERTY

a. *General.* Except where adjustments in accounting are authorized for resolving irregularities in accounts (see subsection b, below), article 0719, U.S. Navy Regulations, 1973, requires commanding officers to convene or recommend the convening of JAG Manual investigations to inquire into the circumstances of all losses or deficits of government funds or property in the custody of persons under their command, irrespective of whether the custodians are in accountable positions (as defined in paragraphs 041501, 041502, and 041503, Navy Comptroller Manual) or have executed accountability receipts for specific funds or property. Additionally, a JAG Manual investigation may be a prerequisite under section 0145 of this Manual to setting off indebtedness of a non-accountable person for loss, damage, or destruction of government funds or property. Examples of instances in which JAG Manual investigations are required, regardless of any other factors, are disbursing deficits of $250 or more, disproportionate ship's store losses, and any losses in which theft or embezzlement by responsible custodians is indicated. Where appropriate for verifying the actual existence of an apparent loss or deficit, a prompt audit should normally precede the decision to convene a JAG Manual investigation. In selecting the type of investigation to be convened in a case of loss of funds or property (*e.g.*, formal or informal fact-finding body), the factors specified in section 0205 of this Manual should be carefully considered in the light of possible adverse financial and career impacts on individuals who may be affected. Coordination with concurrent investigations by other federal or departmental agencies is required, where applicable, under sections 0203 and 0212 of this Manual.

b. *JAG Manual investigation not required.* In the absence of probable indications that a particular loss or deficit of funds or property was caused by theft or fraud on the part of any person, or by fault or negligence on the part of a person designated as accountable for the funds or property, JAG Manual investigations are not required to be convened in the following cases:

(1) Physical losses or deficits of disbursing funds less than $250 which are immediately liquidated pursuant to paragraph 041380. 2b, Navy Comptroller Manual:

(2) Physical losses or deficits of disbursing funds less than $250 which are not liquidated, but for which adjustments in accounting are authorized under paragraph 041380.2C, Navy Comptroller Manual; and

(3) Retail shortages or differences that are not considered to be disproportionate under the following directives, as applicable, which authorize adjustments in accounting:

(a) NAVSUP Publication 487, paragraph 1499 (Ships' Stores);

(b) Navy Supply Systems Command Manual, paragraphs 42236 and 43550;

(c) NAVSUP Publication 486, paragraph 6251 (Food Service);

(d) Marine Corps Order P4400. 19B;

(e) Marine Corps Order P4400.15H; and

(f) Marine Corps Order P4400.124C.

c. *Special advisement for individuals affected.* In any case where a JAG Manual investigation is convened in connection with a loss of funds or property in the custody of an accountable individual or for the purpose of making an administrative determination under section 0145b of this Manual, the accountable individual, or other individual affected, shall be advised (in addition to his rights of a party in accordance with section 0304 in a case of a formal fact-finding body and such advisements as may be required under the Privacy Act of 1974 and Article 31, UCMJ) that:

(1) The scope of the investigation extends to all facts relevant to the loss, its causes, its dollar

value, and kinds and degrees of individual responsibility therefore;

(2) The findings of the investigation may constitute a basis for taking any of the actions indicated below, as appropriate;

(a) If the loss is of property or funds derived from the sale of property, the investigation may lead to a determination by the Deputy Chief of Staff for Installations and Logistics, U.S. Marine Corps; the Chief, Bureau of Medicine and Surgery; or the Commander, Naval Supply Systems Command, as appropriate, as to the financial liability of the accountable individual for the loss pursuant to the provisions of 31 U.S.C. §§ 89-92;

(b) If the loss is of disbursing funds or documents, or of other funds in the custody of an accountable individual, except funds described in the preceding subsection, the investigation may lead to a determination by the Secretary of the Navy or his designee, or by the General Accounting Office, as to whether relief from financial liability will be granted in the event that the accountable individual submits a request for relief under the provisions of 31 U.S.C. § 95a, § 82a-1, or § 82a-2;

(c) If the loss resulted from an unlawful act by a nonaccountable individual, a determination may be made by the individual's commanding officer as to whether to hold the individual financially liable for the loss under section 0145 of this Manual;

(3) The investigation provides the accountable individual an opportunity to be heard; and

(4) The individual may voluntarily relieve himself of financial responsibility for the loss by payment of its dollar value.

d. *Investigative report*. In addition to any other relevant findings, opinions, and recommendations as may be directed by the order appointing the fact-finding body, the investigative report must include, at the minimum, the following items:

(1) A determination of the exact amount of the loss and its precise nature (*i.e.*, whether it was a physical loss or deficiency of government funds, vouchers, records, checks, securities, or papers; an illegal, improper, or incorrect payment; or a loss of property, funds derived from the sale of property, or shortage of inventory).

(2) The identity and position of the accountable officer (*e.g.*, disbursing, supply, ship's store, food services, or commissary store officer), and the identity and position of any other person who had custody of the missing funds, records, or property in question;

(3) The general reputation of the individuals identified in item (2) above for the handling and safeguarding of the funds, records, or property entrusted to them;

(4) Any local condition which was unusual, which required special care, or which involved an exceptional hazard in handling funds or property;

(5) The physical conditions under which the accountable officer operated, including the allocation and condition of space and equipment, as well as the storage and security facilities and services available to him;

(6) Whether or not pertinent regulations and instructions were followed; and

(7) An opinion as to whether or not the loss or deficiency was proximately caused by the individual's fault or negligence.

e. *Guidelines for determining fault or negligence*. In formulating an opinion on whether a loss of funds or property was "proximately caused" by "fault or negligence" on the part of an accountable individual, the following guidelines should be observed:

(1) While there is no burden of proof on the Government to show fault or negligence, neither is there any presumption of fault or negligence on the part of the individual.

(2) The individual is free from fault or negligence if:

(a) there is no direct evidence that fault or negligence on his part was the proximate cause of the loss, and

(b) There is no circumstantial evidence (including an established pattern of carelessness in dealing with funds entrusted to him) which raises a strong inference that fault or negligence on his part was the proximate cause of the loss.

(3) "Fault" is defined as conduct or behavior evidencing bad faith, mismanagement, or neglect of care, or as performance resulting from inattention, dereliction, or perversity.

(4) "Negligence" is defined as conduct which fails to conform to the standard of care which a reasonable, prudent, accountable person would have exercised under the same or similar circumstances. Acts or omissions which, without good justification, deviate materially from duties imposed by regulations or from customary and normal disbursing, collection, or safeguarding procedures or standards would ordinarily constitute negligence for the purposes of the statute involved.

(5) A "proximate cause" is defined as an act or omission which has the direct and foreseeable consequence of producing the loss or creating conditions in which the loss coud occur, and without which the loss would not have occurred.

f. *Distribution.* After action by the convening authority, the completed record or report shall be forwarded in accordance with section 0211b, except:

(1) In a case of a loss or deficiency of disbursing funds or documents, the Commander, Navy Accounting and Finance Center should be the last via addressee; and

(2) In a case of loss or deficiency of government property or of the funds derived from the sale of property, the Commandant of the Marine Corps (Code LA); the Chief, Bureau of Medicine and Surgery; or the Commander, Naval Supply Systems Command, as appropriate. should be the last via addressee.

0910 CLAIMS FOR OR AGAINST THE GOVERNMENT

a. *General.* A fact-finding body ordered to inquire into a certain incident may, if a claim or possible claim for or against the Government is involved in the same incident, be ordered to include in its inquiry those considerations required by Chapter XX, General Claims Regulations; Chapter XXI, Personnel Claims Regulations; or Chapter XXIV, Medical Care Recovery Act Claims Regulations. In such case, the separate investigation required by those claims regulations need not be made. This authority to combine the claims investigation with an inquiry or investigation ordered for other reasons is not to be construed as a mandatory directive. A separate claims investigation may always be ordered in the discretion of the commanding officer of the command concerned. For responsibility for ordering an investigation in situations where a claim for or against the Government is involved, see chapters XX through XXIV.

b. *Procedure when claims matters are involved.* When a JAG Manual investigation is directed to include a claims investigation, the fact-finding body should be guided, in general, by the provisions of chapters XX through XXIV, as appropriate.

c. *Action on record.* When an investigative body has acted in a combined capacity, the action on the record by the convening authority shall also include the matter required by chapters XX through XXIV, as appropriate.

d. *Forwarding record.* When an investigative body has acted on a claims matter exclusively, the record shall be forwarded in accordance with the provisions of the appropriate claims regulations. If the inquiry or investigation has acted in other matters as well as acting as a claims investigation, a copy of the record for use in claims adjudication should be forwarded as prescribed in those regulations, and the original should be forwarded according to the procedures outlined in section 0210. The copy of the record forwarded for claims adjudication should contain all claims filed, together with supporting evidence and any other items dealing exclusively with, and required in, the adjudication of the claims. The original of the record should contain a notation that the claims material was forwarded in that manner.

e. *Claims arising in foreign countries.* Claims which arise in foreign countries should be handled under Chapter XX, General Claims Regulations, Chapter XXII, Foreign Claims Regulations, or pursuant to applicable treaties or other international agreements, and reference should be made in the appointing order to these sources, as appropriate, for guidance in conducting the investigation.

f. *Sonic booms.* A Navy or Marine Corps aviation activity receiving notice that a sonic boom has occurred within the United States, regardless of whether damage has been reported, will immediately undertake an inquiry to determine whether a military aircraft could have been the cause of such disturbance. The aviation activity nearest to the locality at which the alleged sonic boom occurred will be responsible for such inquiry, which shall include queries to all Navy, Marine Corps, Air Force, Air National Guard, and other military facilities in the area from which supersonic aircraft operate to determine the probable source. A thorough check of all traffic, transient as well as local, is imperative. In the investigation of alleged sonic boom damage, the following guidance is provided:

(1) Every person investigating alleged sonic boom damage should be familiar with *The Sonic Boom*, AFLC, (Air Force Logistics Command) P-85.1.

(2) The principal types of damage complained of are glass and plaster damage. Less frequently, claims are received for damage allegedly caused to brick walls, driveways, concrete foundations, and other major structural elements; however, studies have shown that it is almost impossible for a sonic boom to generate over-pressures of sufficient intensity to cause such structural damage regardless of the altitude at which the aircraft was flown. Whenever questionable items of damage are claimed, the services of a construction engineer or other professionally qualified person should be employed either as investigator or as consultant to the investigator.

(3) Promptness in investigating sonic boom claims by qualified personnel is essential.

(4) The following information should be included in the investigative report, if practicable:

(a) Detailed description of alleged damage.

(b) Photographs of the allegedly damaged building or structure and of the specific area of damage.

(c) Detailed description of the building or structure involved, including significant details of construction, size of rooms, age, and general state of repair.

(d) Detailed examination and description of any alleged plaster damage.

(e) Existence or absence of glass damage in the allegedly damaged building or structure, and whether any other glass damage resulting from the incident was reported and verified.

(f) Whether windows and doors were open or shut at the time of the boom.

(g) Whether any loose objects– such as dishes, glassware, or trinkets–inside the building or structure were moved as the result of the boom.

(h) Existence or absence of similar damage to other buildings in the immediate neighborhood.

(i) Type of surrounding community development; type of construction of buildings or structures in the immediate area; density; etc.

(j) Occurrence or absence of seismic disturbances registered in the locality at the time involved.

(k) Other potential sources of damage, such as heavy truck or rail traffic, explosions or earthquakes, and their distance and direction in relation to claimant's building or structure.

(l) Any unusual weather or climatic conditions which may have affected the building or structure.

(5) If, after investigation, it is considered that a sonic boom did occur and that it resulted from Navy or Marine Corps operations, action shall be taken in accordance with the provisions of section 2060 of this Manual. If it is considered that the sonic boom was caused by activities of another U.S. military service, any claim received, together with the investigative material shall be forwarded to the appropriate command and the claimant so informed. If it is considered that the sonic boom was caused by activities other than as listed above (*e.g.*, National Aeronautics and Space Administration, aircraft manufacturers) or if the source cannot be determined, action shall be taken in accordance with the provisions of section 2060 of this Manual.

NOTE: Opinions as to the cause of a sonic boom shall not be expressed to a complaining party, except by a person authorized to negotiate the settlement of a claim.

0911 RESERVISTS

a. *Statutory provisions.* Section 6148 of 10 U.S.C. governs entitlement to benefits administered by the Department of the Navy for persons in the Naval Reserve or the Marine Corps Reserve who are injured, contract a disease, or die during periods of active duty, active duty for training, or inactive-duty training (drill), reads as follows:

"Disability and death benefits: Naval Reserve and Marine Corps Reserve

(a) A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty, or to perform inactive duty training, for any period of time, and is disabled in line of duty from injury while so employed, or the beneficiary of such a member who dies from such an injury, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service. For the purpose of this subsection a member who is not in a pay status shall be treated as though he were receiving the pay and allowances to which he would be entitled if serving on active duty.

(b) A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty, other than active duty for training under section 270(b) of this title, for a period of more than 30 days, and is disabled in line of duty from disease while so employed, or the beneficiary of such a member who dies from such a disease, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service.

(c) Subsections (a) and (b) do not authorize the hospitalization of dependents of members of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve.

(d) A member of the Naval Reserve or the Marine Corps Reserve who, in time of peace, becomes ill or contracts disease in line of duty while he is on active duty or performing inactive-duty training is entitled to receive at Government expense medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such a member is also entitled to necessary transportation and subsistence incident to treatment and return to his home upon discharge from treatment. The treatment may not extend beyond ten weeks after the member is released from active duty, except–

(1) upon an approved recommendation of a board of medical survey consisting of one or more officers in the Medical Corps; or

(2) upon authorization of the Surgeon General, based on the certificate of a reputable physician that the illness or disease is a continuation of the illness or disease for which the member was initially treated and that benefit will result from further treatment.

(e) If a person is entitled to benefits under subsection (a) or (b) and under–

(1) section 6327 of this title; or

(2) section 331 of title 38;

he must elect the provision that is to be applied to him."

NOTE: Pay and allowances for reserve members under 10 USC 6148(a) and (b) are now authorized under 37 USC 204(i).

b. *Active duty for training.* The period of active duty for training extends from the time of reporting to the time of release, and, if the orders to active duty for training provide for travel, the time of travel to and from the duty station not in excess of the allowable constructive travel time as prescribed in paragraphs 10241 and 80211, DODPM.

c. *Inactive duty training (drill).* Employment in inactive duty for training (drill) normally includes only that period between muster and dismissal.

d. *Investigation.* Incidents involving injury or death of reservists occurring during a period of active duty for training or inactive duty training, as defined above, or any case involving a question of whether a disease or injury was incurred during a period of active duty for training or inactive duty training, as defined above, should be investigated. The injury report form (*see* chapter VIII), may be used in proper cases to report the investigation of injury, but not death cases. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, the responsibility for the conduct of investigations in these cases is ordinarily in the area coordinator or subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, in whose geographic area of responsibility the incident occurred. The Commanding General, 4th Marine Division, and the Commanding General, 4th Marine Aircraft Wing, are responsible for ensuring that investigations are conducted into incidents of reservists within their commands.

e. *Information required*

(1) The hour on which the reservist began to travel directly to or from the duty or training;

(2) The hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) The method of travel used;

(4) The actual itinerary; and the authorized itinerary;

(5) The authorized mode of travel and authorized travel time;

(6) The manner in which the travel was performed; and

(7) The place, time, and circumstances of injury and/or death.

0912 FIREARM ACCIDENTS

a. *General.* The record of the JAG Manual Investigation should document all of the relevant circumstances surrounding an incident involving self-inflicted gunshot wounds.

b. *Warnings required.* Since most firearm accidents occur with no witnesses other than the victim, it is of utmost importance that advice pursuant to 0306 of this Manual be documented before the injured firearm handler is interviewed in the course of a JAG Manual Investigation.

c. *Specific facts required.* The following information should be included in the record:

(1) Date, time of day, place, and names and addresses of witnesses present. See section 0901.

(2) Description of physical location of incident, and light and weather conditions. See section 0817.

(3) Description of the firearm and its mechanical condition, especially safety mechanisms, and whether the safety mechanisms were used by the firearm handler.

(4) Description of firearm handler's formal training, experience, and familiarity with the firearm's mechanical condition, safety mechanisms, and proper use.

(5) Full discussion of any psychological problems, discussion of any mental impairment due to drug or alcohol use, and statement of mental responsibility. See section 0807 and 0808 of this Manual.

0913 MISCELLANEOUS

a. *Security violations.* For specific fact-finding requirements respecting investigations ordered to inquire into the loss, compromise, or subjection to possible compromise of classified information, see 4-102 of OPNAVINST 5510.1 series. Such reports are sent to CNO (009D) as ultimate addressee.

b. *Postal violations.* For specific fact-finding requirements respecting investigations ordered to inquire into postal losses or offenses, see 6203 U.S. Navy Postal Instructions, OPNAVINST 5112.1 series.

c. *Injury, disease, or death.* For specific fact-finding requirements respecting investigations ordered to inquire into injury, disease, or death of personnel, see section 0817 of this Manual.

d. *Fires.*

(1) The investigation of significant fires aboard ship or ashore should be documented in a JAGMAN investigation. Generally, a fire will be considered significant if any one of the following exists: damage is done to major/vital equipment; the origin of the fire is suspicious; the fire delays deployment; or causes significant change in operating schedule; degradation of mission capability occurs; naval personnel were responsible for the fire; the fire may have resulted from defective naval design specification or installation; or if unsound operating doctrine or procedures caused or contributed to the fire.

(2) This does not limit a commanding officer's authority to convene an investigation into any fire when he believes one is warranted.

(3) Essentials to be reported are:

(a) When was the fire reported?

(b) How fast was the response to the fire?

(c) Who responded to the fire? What was the level of damage control and fire fighting training of those who responded?

(d) What fire fighting equipment was used? What equipment could not be used? Why?

(e) What communications were used and what if any difficulties were there in communication?

(f) What time was the fire reported out?

(g) How long did it take to extinguish?

(h) What caused and contributed to the ignition and spread of the fire?

(i) What burned? What areas were involved?

(j) Identity of personnel injured or killed.

(k) When were the spaces involved last inspected and what discrepancies were noted?

(l) If a shipboard fire, was the ship at sea or in port? What was the ship's condition of readiness? What was the fire's effect on the ship's ability to carry out its mission?

(m) What is the cost to repair the damage done?

(n) Assess the possibility of occurrence of such a fire on a similar ship or installation.

(4) The foregoing investigative report is separate from the Safety report required by OPNAVINST 11320.25, and NAVMATINST 11320.5 for fires ashore, and by OPNAVINST 5102.1 for fires on board ship.

e. *Pollution incidents.* When air, ground, or noise-pollution incidents are required to be investigated or acted upon because of service regulations (other than the JAGMAN) or because of applicable Federal, state or local laws or regulations, a copy of any report should be submitted directly to the Judge Advocate General. In this regard, the format and content required by the applicable service instruction or civil law or regulation will govern, there being no requirement to adhere to the JAGMAN investigation format. Further guidance concerning investigations in conjunction with notices of violations of air and water-pollution statutes, less oil spills or discharges, is contained in CNO messages 171540Z Apr 78 (NOTAL) and 151124Z Jun 79 (NOTAL), CINCPACFLT message 282324Z Jun 79 (NOTAL) and CINCLANTFLTINST 6240.3 dated 11 Sept 1973, and will be incorporated into a planned revision to OPNAVINST 6240.3 series.

f. *Combined investigations of maritime incidents.* For maritime incidents involving two or more NATO member countries, a single investigation may, but need not, be conducted in accordance with the NATO Standardization Agreement 1179 (STANAG). Three alternative procedures are set out in the STANAG for investigating such incidents. They are:

(1) a combined board of inquiry;

(2) a national inquiry, attended by witnesses and/or observers from other nations.

(3) independent inquiries coordinated by the presidents of those inquiries.

Excerpts from the STANAG can be found in Appendix A-9-a.

Chapter X

ARTICLE 139 INVESTIGATIONS-REDRESS OF INJURIES TO PROPERTY

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1004 LIMITATIONS OF APPLICATIONS

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1007 ACTION TO BE TAKEN BY COMMANDING OFFICER AND HIGHER AUTHORITY WHERE OFFENDERS ARE MEMBERS OF ONE COMMAND

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1008 ACTION TO BE TAKEN BY COMMANDING OFFICER AND HIGHER AUTHORITY WHERE OFFENDERS ARE MEMBERS OF DIFFERENT COMMANDS

- a. Action by common superior
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1009 RECONSIDERATION

1010 EFFECT OF COURT-MARTIAL PROCEEDINGS

1001 STATUTORY AUTHORITY

This chapter outlines procedures for administrative settlement of claims when property is willfully damaged or wrongfully taken by members of the armed forces (Article 139, UCMJ).

1002 SCOPE

Claims for damage, loss, or destruction of property caused by a person or persons in the naval service, subject to the limitations in this section, are within the provisions of Article 139, UCMJ only if such damage, loss, or destruction is caused by riotous conduct, acts of depredation, or acts showing such reckless and wanton disregard of the property rights of others that a willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ are cognizable under Article 139. However, redress for damages resulting from such acts is not to be confused with disciplinary action under Article 109 or any other article of the UCMJ. See section 1010. Charges against pay under these regulations shall be made against the pay of persons shown to have been principal offenders or accessories. Membership in a certain organization or detachment and presence at the scene at the time the damages were sustained are not sufficient in themselves to make a person a principal or an accessory. There must be some evidence of active or passive participation.

1003 CLAIMS NOT COGNIZABLE

The following claims are not payable under this chapter.

a. *Claims payable under other regulations.* Claims for damage, loss, or destruction of property which are payable by the Government under the provisions of the general, personnel, or foreign claims regulations set forth in chapters XX-XXII or under admiralty claims procedure set forth in chapter XII. No charge will be made under these regulations against the pay of any person in the naval service to reimburse the claimant or the Government for payments warranted under other regulations or other statutes.

b. *Claims resulting from simple negligence.* Claims for damage, loss, or destruction of property resulting from simple negligence, whether or not within the scope of employment.

c. *Claims of subrogees.* Any portion of a loss covered by insurance, whether carried by the offender, the claimant, or a third party.

d. *Claims for personal injury or death.*

e. *Acts or omissions within the scope of employment.* Claims for damage, loss, or destruction of property resulting from acts or omissions, while the offender is acting within the scope of his employment.

f. *Absence of riotous or violent conduct.* Claims arising from larceny, wrongful appropriation, forgery, or deceit, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous or violent conduct; or claims for damages arising from breach of contract.

g. *Government property.* Reimbursement for damage, loss, or destruction of property of the United States.

1004 LIMITATIONS OF APPLICATIONS

a. *Time limitations.* In order for a claim to be cognizable under Article 139, UCMJ, a complaint out of which such claim arises must have been made to military authority within 30 days of the date of the incident.

b. *Aliens.* Claims of aliens under Article 139, UCMJ, in addition to the exclusionary limitations of these regulations, are subject to all laws and regulations controlling payments to aliens in effect at the time of action on the claim. If the claimant is a national of a country at war with the United States, or an ally of such foreign country, the claim will not be approved unless it be determined that the claimant is friendly to the United States.

c. *Limitation of amount of assessment.* No assessment exceeding the amount of $750 will be made against the pay of any offender under the provisions of Article 139, UCMJ for any single act or incident.

d. *Acts of property owner.* When the acts or omissions of the owner, his lessee, or his agent were a proximate contributing factor to the loss or damage of the property involved, assessment will not be made against any offender in excess of that amount for which he is found to be directly and solely responsible.

e. *Only direct damages considered.* Assessment will be made only for direct physical damages. Indirect, remote, or inconsequential damage will not be considered.

1005 COMPLAINT BY INJURED PARTY

a. *Ordering investigation.* Whenever a complaint is made to a commanding officer that willful damage has been done to property or that property has been wrongfully taken by members of the naval service, and the nature of the damage or wrongful taking is within the purview of Article 139, UCMJ, the commanding officer, if he has authority to convene special courts-martial and if an alleged offender is a member of his command, shall order an investigation of the matter. If the alleged offender is not a member of his command, he shall forward the complaint and all evidence which can be obtained locally to the commanding officer of the alleged offender. If the command of an alleged offender is not known, the complaint and all evidence which can be obtained locally shall be sent to the Chief of Naval Personnel or the Commandant of the Marine Corps, whichever is appropriate, for forwarding. If the commanding officer of an alleged offender does not have authority to convene special courts-martial, he shall forward the complaint to his superior with such authority, who shall, for the purposes of Article 139, UCMJ, be considered the commanding officer of the offender. If the incident complained of occurred at a place remote from the command of the alleged offender, and the commanding officer of the alleged offender so requests, the commanding officer of the naval activity located nearest the place of the incident shall order an investigation of the matter as required by Article 139, UCMJ and these regulations. Upon completion of such investigation, the record thereof shall be forwarded to the commanding officer who requested the investigation for action required by section 1007. Where more than one offender or more than one command is involved, the matter shall be handled by a single investigation, if practicable. In this connection see sections 0107 and 1008.

b. *Advice to claimant.* The commanding officer who orders the investigation of the complaint shall fully advise the claimant by the most practicable means, that:

(1) In order for a claim to be cognizable under Article 139, UCMJ, the claimant must be within the provisions of section 2011 of this Manual.

(2) A claim shall be presented, if practicable, in triplicate. It should contain a statement setting forth the amount of the claim, insurance coverage, and available detailed facts and circumstances surrounding the incident from which the claim arose. When there is more than one claimant as a result of a single incident, each such claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized agent or representative. The appropriate portions of section 2013 of this Manual set forth additional information and evidence which ordinarily should be supplied by a person making claim for damage or loss of property.

(3) Such claim must be submitted to the investigating body as expeditiously as possible and not later than 30 days from the date of this advice.

1006 INVESTIGATION

a. *General* The procedure for redress of injuries to property (Article 139, UCMJ) is accomplished by the use of a formal investigation or a court of inquiry. The claim is the subject of inquiry by either of these bodies, and the rules governing the appropriate type of investigation are applicable. The Privacy Act of 1974 must be fully complied with when conducting the formal investigation or court of inquiry and the record must demonstrate the compliance. See section 0308 and Appendix A-3-a.

b. *Fact-finding body.* The fact-finding body appointed to investigate a complaint under Article 139, UCMJ shall consist of from one to three commissioned officers. Subject to the provisions of these regulations, pertinent portions of section 2006 and 2007 respecting matters to be ascertained in investigating property damage are applicable. The claim of the owner or custodian of the property involved shall be made an enclosure to the record of proceedings of the fact-finding body.

c. *Statutory requirements and powers.* Under the authority of Article 139, UCMJ, witnesses may be summoned to testify at the investigation in the same manner as for courts-martial. See paragraph 115, MCM. However, when an investigation is convened to inquire into other matters in addition to investigating a complaint under Article 139, UCMJ, the power of subpoena shall not be used to compel the attendance of witnesses whose testimony is not directly related to the Article 139 claim. Witnesses before such investigations shall be examined on their oath or affirmation. Depositions, documents, and other evidence may be received in evidence.

d. *Rights of an alleged offender.* An alleged offender shall, if practicable, be accorded the rights of a party. See chapter III. If such rights are not accorded an alleged offender, and such rights have not been waived by him, he shall, prior to any charge being made against his pay, be afforded the opportunity to inspect the record of proceedings or a copy thereof. He shall, in such a case, submit a signed statement in regard thereto or to the effect that he does not desire to make such a statement. If, by reason of unauthorized absence or other factors, the rights of a party cannot be afforded to an alleged offender, a full and complete report of the reasons therefor shall be included in the record of proceedings. If, at the time of the convening of an Article 139 investigation, the identity of an offender is unknown, the investigation shall proceed with the subject matter of the inquiry. However, as soon as the identity of the offender becomes known, such person shall be called before the investigation (unless such action is impractical by reason of unauthorized absence or other factors), designated as a party to the investigation, and accorded his rights as such. Such proceedings and any waiver on the part of the offender shall be recorded verbatim. A person in an unauthorized absence or desertion status shall, while in such status, be considered as having waived his rights as a party to the investigation. Upon termination of the unauthorized absence or desertion, such person shall, if practicable, be accorded the rights of a party as to any portion of the investigation which has not then been completed.

e. *Measure of damages.* The inquiry or investigation is to be guided by the general claims regulations (chapter XX) in determining the measure of damages as a basis for recommending assessment.

f. *Findings.* The investigation shall make findings of fact as to the necessary elements set forth in these regulations pertaining to the validity of the claim under consideration and shall state its findings of fact and opinions, as appropriate, as to the person or persons responsible for the damage concerning which the claim is filed. Using the appropriate measure of damages, it shall determine the amount of damage incurred by the property owner.

g. *Recommendations.* The fact-finding body shall make recommendations as to the amount to be assessed and charged against the pay of the responsible party or parties. If more than one person is found to be responsible, recommendations shall be made as to the amount to be assessed against each offender.

h. *Consolidation of investigations.* A formal investigation conducted under Article 139, UCMJ may be combined with an investigation required for any other reason.

1007 ACTION TO BE TAKEN BY COMMANDING OFFICER AND HIGHER AUTHORITY WHERE OFFENDERS ARE MEMBERS OF ONE COMMAND

a. *Action by commanding officer.* When all of the offenders are members of the command of the officer who has ordered the investigation, such officer shall determine, in taking action on the record of such investigation, whether the claim is within the provisions of Article 139, UCMJ and these regulations. If he finds that the claim is within such provisions, he shall fix the amount to be assessed against the offender or offenders. Subject to the limitations of section 1004, charges totaling the amount of damages assessed and approved shall be made in such proportion as may be deemed just upon the pay of those shown to have been principals or accessories.

b. *Review.* If the commanding officer has authority to convene a general court-martial, no additional review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial jurisdiction, the original of the investigation, with the commanding officer's action thereon approving or disapproving the claim, shall be forwarded to the officer exercising general court-martial jurisdiction over the command. A copy of the report will be filed at the command concerned. Upon receipt by the officer exercising general court-martial jurisdiction, the report, as approved or disapproved, will be reviewed. Such reviewing authority shall place his action on the record and return the record to the commanding officer who, after noting his order or other actions thereon, shall forward it to the Judge Advocate General via any other appropriate commands. The final action of a commanding officer either directing a charge against the pay of an offender or denying the claim, shall be consistent with the reviewing authority's action. The claimant and offender or offenders shall be informed of such final order. Any determination that the claim is invalid or that no members of the command were pecuniarily responsible shall be communicated promptly to the claimant.

c. *Charge against pay.* The amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offender and the amounts so collected will be paid to the claimant. The amount charged in any single month against the pay of an offender under Article 139, UCMJ shall not exceed one-half of the basic pay of the offender. The basic pay of an offender shall be as defined in paragraph 126h(2), Manual for Courts-Martial. The action by the commanding officer in ordering the assessment against the pay of an offender shall be conclusive on any disbursing officer for payment by him to the claimant of the damages assessed, approved, charged, and collected.

1008 ACTION TO BE TAKEN BY COMMANDING OFFICER AND HIGHER AUTHORITY WHERE OFFENDERS ARE MEMBERS OF DIFFERENT COMMANDS

a. *Action by common superior.* Where the offenders are members of different commands the investigation or investigations conducted under Article 139, UCMJ shall be forwarded, if practicable, to the common superior who exercises general court-martial jurisdiction. In such circumstances, a commanding officer who ordered an investigation shall not make charges against the pay of an offender, but shall make recommendations in this regard. If an alleged offender was neither accorded the rights of a party nor subsequently afforded the right to inspect the investigative report and make a statement thereon, a copy of the report shall be forwarded to such offender for his inspection and his statement. This statement may set forth the member's version of the incident or it may merely reflect the fact that he does not desire to avail himself of the opportunity. The statement shall be forwarded to the superior exercising general court-martial jurisdiction who is to adjudicate the claim. The common superior commander shall fix the amount, if any, to be assessed against the offender or offenders and direct the appropriate commanding officers to take action accordingly. See section 1007b-c. The common superior shall forward the record, with his action and all statements appended, to the Judge Advocate General via appropriate commands.

b. *Forwarding to SECNAV (JAG).* Where it is not practicable or possible to carry out the procedure prescribed in section 1008a, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of an offender until directed by the Secretary of the Navy (Judge Advocate General).

1009 RECONSIDERATION

In the absence of newly-discovered evidence, an adjudication pursuant to these regulations shall be final except as to the Secretary of the Navy (Judge Advocate General). In the event of newly discovered evidence deemed sufficient to warrant reopening the matter, further investigation shall be conducted by the commanding officer and forwarded with recommendations to the Judge Advocate General.

1010 EFFECT OF COURT-MARTIAL PROCEEDINGS

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender; consequently, a person may be tried and punished for violation of the UCMJ without regard to proceedings under these regulations. The two proceedings, one disciplinary and the other administrative, are legally independent of each other and action in one proceeding is not determinative in the other; the court-martial is of a criminal nature and the assessment of damages is of a civil nature. Acquittal or conviction of the alleged offender by court-martial is evidence but is without independent controlling effect upon the proceedings under Article 139, UCMJ or approval or denial of a claim thereunder.

CHAPTER XI

ARTICLE 138 INVESTIGATIONS—COMPLAINTS OF WRONGS

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1101 PURPOSE

To establish procedures for the preparation, submission, and processing of complaints made pursuant to Article 138, Uniform Code of Military Justice.

1102 STATUTORY PROVISION

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon. Article 138, UCMJ; 10 U.S.C. § 938.

1103 DEFINITIONS OF TERMS AND PHRASES USED IN THIS CHAPTER

a. *Complaint of wrongs:* a procedure by which a member of the armed forces, either officer or enlisted, solicits relief from an action of his commanding officer which the member considers to be without basis or unauthorized, arbitrary and capricious, unfair, discriminatory, or unjust, and which results in a personal detriment, harm, or injury to the complainant, which is capable of redress in command channels without resort to trial by court-martial.

b. *Commanding officer:* any commissioned officer or warrant officer empowered to impose nonjudicial punishment upon the complainant pursuant to Article 15(b) or (c), UCMJ, and section 0101.

c. *Respondent:* the commanding officer (or his successor) against whom the complaint of wrongs is made.

d. *Wrongs:* any and all actions, except those set forth in 1104e, that may be taken or caused by a commanding officer, under color of his Federal military authority, resulting in detriment, harm, or injury to a subordinate officer, warrant officer, noncommissioned officer, or enlisted person, which are without substantial basis or unauthorized, arbitrary and capricious, unfair, discriminatory, or unjust, and which are personal to the complainant and are properly capable of redress in command channels without resort to trial by court-martial. The wrong need not have been committed personally by the complainant's immediate commanding officer, but may have been committed by any commanding officer as defined in subsection b above. The wrong may consist of either affirmative action or passive inaction.

e. *Redress:* any lawful action taken by the commanding officer, the officer exercising general court-martial jurisdiction, or any officer in the chain of command [see section 1105c] which restores to the complainant whatever rights, privileges, property, or status he would have been entitled to had the wrong not occurred.

f. *Officer exercising general court-martial jurisdiction:* the officer (or his successor in command) exercising immediate general court-martial jurisdiction over the respondent. In a case in which the complaint is forwarded to the Secretary of the Navy for resolution pursuant to section 1105b, the Secretary of the Navy or his designee shall act, with respect to that complaint, as the officer exercising general court-martial jurisdiction.

g. *Examination into or proceedings on a complaint:* an examination or proceedings consisting of either a formal or an informal inquiry into all facts material to the complaint. [See section 1108a.] An inquiry may be considered informal when the officer exercising general court-martial jurisdiction personally makes the necessary inquiry without formal hearings, or when he instructs a subordinate officer to inquire informally into the matter and report back to him. The inquiry is considered formal when the matter is referred to a court of inquiry or when a board of officers or an investigating officer is appointed in writing to inquire into the allegations. If a formal inquiry is initiated, it must be conducted in accordance with Chapter V. If an informal inquiry or JAG Manual investigation is considered necessary or appropriate, see section 0308 to determine whether Privacy Act statements are required.

1104 POLICY

a. It is the policy of the Department of the Navy to resolve complaints of wrongs at the lowest possible level of command and to provide administrative procedures to effect such resolution. Article 138 places the principal responsibility for the resolution of complaints of wrong upon the officer exercising general court-martial jurisdiction over the respondent. The officer exercising such general court-martial jurisdiction is required to take proper measures to redress the wrong(s) complained of. In certain types of cases, specific administrative procedures, including review and appeal, already exist and provide a forum for the consideration and review of actions deemed unjust by the recipient of such actions. Such other forums and procedures may involve consideration by review boards or officers possessing expertise directly relevant to the type of case to be considered, *e.g.*, Field Naval Aviator Evaluation Boards to consider continuation in flight status, and Review Boards to consider enlisted Marines for reduction in grade. When the officer exercising general court-martial jurisdiction receives a complaint of wrongs which may properly be reviewed through such other administrative forums or procedures, he shall determine whether or not the complaint is subject to resolution in such a channel. If so, the officer exercising general court-martial jurisdiction may – but is not required to – refer the complainant to those channels. (It is not appropriate, however, to refer the complainant to the forums or procedures listed in subsections g through i below). In the alternative, the officer exercising general court-martial jurisdiction may conduct or cause to be conducted, an independent inquiry. In either case, the examination and decision in the matter by the officer exercising general court-martial jurisdiction shall constitute the requisite "examination into the complaint" within the meaning of Article 138. If the officer exercising general court-martial jurisdiction refers the complaint to other existing channels, he shall arrange to be advised of the results of the consideration of the complaint in those channels. Upon receipt of this advice, the officer exercising general court-martial jurisdiction shall complete his consideration of the complaint in light thereof, and shall proceed in accordance with section 1105c.

b. A complaint lodged for the purpose of seeking disciplinary action against others does not consitute a complaint made pursuant to Article 138, UCMJ.

c. A wrong committed by a commanding officer superior in command to the complainant's commanding officer is properly cognizable under Article 138, UCMJ.

d. Any complaint which is asserted under Article 138, UCMJ – including those which, by definition, are excluded from the scope of the Article – will be forwarded to the officer exercising general court-martial jurisdiction over the respondent.

e. The procedures prescribed herein are not to be used to attack collaterally the findings or sentence of a court-martial or the imposition of a nonjudicial punishment, which are expressly governed by other articles of the Uniform Code of Military Justice.

f. The procedures prescribed herein are not to be used to attack collaterally the results of administrative discharge proceedings in the case of officer or enlisted personnel, which are governed by Bureau of the Naval Personnel Manual, Article 5040200, and Chapters 5 and 6, Marine Corps Separation and Retirement Manual.

g. The procedures prescribed herein are not applicable to appeals from an order or decision of an immediate supervisor who is not a commanding officer, which are governed by Article 1105, U.S. Navy Regulations, 1973.

h. These procedures are not to be confused with request mast procedures prescribed by Article 1107, U.S. Navy Regulations, 1973.

i. The procedures prescribed herein are not applicable to applications to the Board for Correction of Naval Records, which are governed by 10 U.S.C. §1552.

1105 JURISDICTION

a. *Who may complain.* The complainant must be a member of the armed forces at the time the complaint is made. This includes inactive duty reservists who face involuntary call to active duty and whose complaints involve such prospective activation.

b. *Who may be the subject of a complaint.* Any commanding officer, as defined in subsection 1103b, may be the respondent or the subject of a complaint of wrongs. In cases of complaints by individuals against the actions of the Chief of Naval Operations, the Commandant of the Marine Corps, or other officers at the departmental level who do not report to the Chief of Naval Operations or the Commandant of the Marine Corps, the complaint shall be addressed to the Secretary of the Navy and forwarded via the chain of command.

c. *Who shall consider the complaint.* With the exceptions set forth in section b above, jurisdiction to examine into complaints, take action thereon, and forward the requisite report of proceedings, which shall consist of a statement and/or report of findings and the reasons therefor, lies initially with the officer exercising general court-martial jurisdiction over the respondent. Where such officer lacks the authority to grant the necessary redress, he shall forward the complaint, with appropriate recommendations for disposition, to the next superior in the chain of command who does possess the necessary authority to redress the wrong. Regardless of who ultimately or intermediately takes action to redress the wrong, primary jurisdiction over the complaint and the concomitant primary responsibility for forwarding the report of proceedings to the Secretary of the Navy remains vested in the officer exercising immediate general court-martial jurisdiction over the respondent, except where originial and final action to resolve the complaint is taken at the departmental level. [See section 1109a.]

d. *Authority of intermediate superior officers to whom a complaint is forwarded.* An intermediate superior officer to whom a complaint is forwarded may comment on the merits of the complaint and may add pertinent evidentiary material to the file. He may also grant the redress, if empowered to do so, and note his action in the record. In any event, he shall then promptly forward the complaint and allied papers to the officer exercising general court-martial jurisdiction over the respondent.

1106 PROCEDURE

a. *Form of complaint.* The complaint shall:

(1) Be in writing and be signed by the complainant;

(2) Include a statement that it is made pursuant to the provisions of Article 138, UCMJ;

(3) Set forth all of the relevant facts applicable to the grievance;

(4) Be addressed, through the chain of command, to the appropriate officer exercising general court-martial jurisdiction – except in cases falling within the scope of section 1105b, in which case the complaint shall be addressed, via the chain of command, to the Secretary of the Navy;

(5) Clearly identify the respondent;

(6) State that the complainant, pursuant to section 1106d, has previously requested redress, in writing, of his commanding officer or of the superior officer in the chain of command who committed the wrong, and that he was denied such redress (a description of this previous request for redress and of its results should be included);

(7) Set forth the specific relief desired;

(8) Include all available evidence, including affidavits and statements of witnesses, supporting the complaint or providing other pertinent information;

b. *Joinder.* The complaint may not be joined with complaints of other individuals. Similarly, each complaint shall seek redress for the action of only one respondent. If the complainant considers himself wronged by more than one respondent, the wrongs of each respondent shall be the subject of a separate complaint.

c. *Time limitations.* A complaint must be submitted within a reasonable time after the occurrence of the alleged wrong. In the absence of unusual circumstances, a complaint initiated more than 90 days after discovery by the complainant of the alleged wrong may be considered to be untimely. The period during which the complainant's application to his commanding officer pursuant to section 1106d is being considered by the latter is not includible, however, in this 90-day period. The officer exercising general court-martial jurisdiction may deny relief solely on the ground that the complaint was not filed in a timely manner. Such action, however, does not obviate the requirement for forwarding the report of proceedings to the Secretary of the Navy.

d. *Application to commanding officer.* The essence of a complaint properly cognizable under Article 138 is a wrong, coupled with the commanding officer's refusal or failure to redress such wrong. Accordingly, the commanding officer must be afforded the opportunity to redress the wrong as a condition precedent to any subsequent action pursuant to Article 138. Where the complaint lies against an officer, the complaint shall be submitted to the officer complained against via the chain of command. In either event, the respondent will act upon the application in a timely manner and will notify the complainant of such action.

e. *Substance of the complaint.* The complaint is properly cognizable under Article 138 if, on its face, it alleges a wrong as defined in section 1103d. Statements, documents, or other evidentiary matter may be submitted by the complainant to assist in expediting the inquiry.

f. *Participation by complainant in proceedings on complaint.* Article 138 does not give a complainant a right to participate in actions taken on his complaint after its submission. He may be named as a party, if appropriate, and accorded the rights of such, however, in any formal inquiry conducted pursuant to sections 1103g and 1108a. He may likewise be requested to submit clarifying or explanatory statements for consideration in connection with his complaint.

1107 LEGAL ADVICE

A judge advocate, where reasonably available, may be consulted by a complainant and upon request may provide legal advice concerning the submission of an Article 138 complaint. Such advice should include an opinion whether an Article 138 complaint is an appropriate procedure under the circumstances. If not, advice should be given concerning the appropriate law or regulation under which the member may properly proceed in his quest for appropriate relief. This section is not to be construed as requiring the assignment of a judge advocate to represent a complainant in any proceedings held pursuant to Article 138, or to create a right to individual military counsel. A complainant may retain civilian counsel at his own expense, to assist him in connection with the submission of his complaint.

1108 CONSIDERATION OF THE COMPLAINT BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL AUTHORITY

Upon receipt of the complaint, the officer exercising general court-martial jurisdiction shall:

a. Cause to be conducted an appropriate inquiry into the facts on which a complaint is based. Such inquiry may be formal or informal in nature. [See section 1103g.] The extent and nature of such inquiry is discretionary with the officer exercising general court-martial jurisdiction, and will depend upon the seriousness of the allegations; the available time; and the exigencies of the service. Regarding participation by the complainant in this inquiry, see section 1106f.

b. If redress is warranted and it is within his authority to do so, grant the redress; or,

c. If he lacks authority to grant the redress requested, examine into the complaint as specified in section 1108a, and, where redress is considered to be warranted, forward the complaint, along with his specific recommendations concerning appropriate redress, to the cognizant headquarters, bureau, office, or facility having authority to grant such redress, informing the complainant of the referral; or,

d. After examination into the allegations, notify the complainant that the complaint is considered to be without merit, and submit the required report to the Secretary; or,

e. Return the correspondence to the complainant, informing him that the complaint is not one which lies within the scope of Article 138, in accordance with the definitions set forth in section 1103 and the policies set forth in section 1104, or that it is incomplete or otherwise deficient in substance. Complaints returned in accordance with this subparagraph will specifically state why the complaint is not one which lies within the scope of Article 138, or wherein it is incomplete or deficient in substance. In the former case, if there are other channels available which are appropriate for resolution of the alleged wrong, the complainant should be advised of these channels and the methods by which to proceed. In the latter case, the complainant shall be advised that he may have his complaint forwarded, despite its incompleteness or deficiency in substance, if he chooses to do so; or,

f. Within his discretion, delay his examination into a complaint if there is pending a court-martial, an appeal of the findings or sentence of a court-martial, or a complaint in another case, the consideration of which is reasonably likely to result in clarification of the issues or redress of the alleged wrong. Such delays shall not extend beyond completion of action in the related court-martial, appeal, or case, or beyond thirty days from the date of receipt of the complaint by the officer exercising general court-martial jurisdiction, whichever is earlier.

1109 ACTION ON THE COMPLAINT

a. *Responsibility for redress.* Except in those cases wherein the original complaint is addressed to the Secretary of the Navy [see section 1105b], the officer exercising general court-martial jurisdiction has primary responsibility for granting the necessary redress or procuring the desired relief, if warranted. Such responsibility is nondelegable. [See section 1105c.]

b. *Criteria for evaluation.* If there is no substantial basis for the action of the officer complained against, or if the action is unfair, unjust, discriminatory, or arbitrary and capricious, then a wrong has occurred. The determination as to whether or not a wrong has occurred should be based upon all of the facts developed by the inquiry described in section 1103g. Although the complainant need not present any evidence in support of his complaint, the amount and weight of evidence which is ultimately presented by the complainant is an important factor to be considered by the officer examining into the complaint. Such officer is expected to take all reasonable measures for ascertaining the facts.

1110 WITHDRAWAL OF COMPLAINT

A complainant may withdraw his complaint at any time.

1111 NOTIFICATION TO COMPLAINANT

a. *Prior to action by the officer exercising general court-martial jurisdiction.* Prior to acting on a complaint received by the officer exercising general court-martial jurisdiction, that officer shall ensure that the complainant has been informed of the substance of any forwarding endorsements which have added substantive comments or new factual matter, and afford the complainant the opportunity to rebut any adverse matter contained therein.

b. *Subsequent to action by the officer exercising general court-martial jurisdiction.* The officer exercising general court-martial jurisdiction shall advise the complainant, in writing, of the action he has taken on the complaint.

1112 FORWARDING TO THE SECRETARY OF THE NAVY

Except in those cases in which original action on the complaint is taken at the departmental level, the officer exercising general court-martial jurisdiction is responsible for forwarding a report of the proceedings to the Secretary of the Navy. Such report shall be forwarded to the Secretary of the Navy (Judge Advocate General). Marine Corps activities shall, in addition, include the Commandant of the Marine Corps (Code JA) as a via addressee. The report shall include the following:

a. The original complaint – or, if unavailable, a certified copy thereof;

b. A report of the proceedings had thereon;

c. A statement of the action taken thereon by the officer exercising general court-martial jurisdiction;

d. A copy of the reply of the officer exercising general court-martial jurisdiction to the complainant, informing the latter of the action taken on the complaint.

1113 ACTION BY THE JUDGE ADVOCATE GENERAL

a. *When complaint has been acted upon.* Upon receipt of a complaint which has been acted upon by the officer exercising general court-martial jurisdiction, the Judge Advocate General shall:

(1) (a) Ensure that there has been substantial compliance with Article 138, UCMJ, and this Chapter; or,

(b) Return the file to the appropriate officer exercising general court-martial jurisdiction for additional investigation or further action.

(2) Forward the file to the Secretary of the Navy with such evaluations and recommendations as he may consider appropriate.

b. *When complaint is addressed to the Secretary of the Navy for resolution.* When a complaint falls within the scope of section 1105b and is forwarded for resolution at the departmental level, the Judge

Advocate General shall provide such legal advice to the Secretary of the Navy as may be required.

1114 REVIEW BY THE SECRETARY OF THE NAVY

a. *Scope.* The action of the officer exercising general court-martial jurisdiction is subject to review by the Secretary or his designee.

b. *Action where redress was granted.* The Secretary may set aside actions favorable to the complainant only if such redress was beyond the statutory or regulatory authority of the officer granting the redress.

c. *Action where redress was denied.* The Secretary may direct that further proceedings be had in the matter, or he may direct that all or a portion of the requested redress be granted.

d. *Notification to complainant.* If, upon review of an adverse resolution of a complaint by the officer exercising general court-martial jurisdiction, such resolution is determined to be correct in law and fact, the complainant shall be so notified by the Secretary of the Navy or his designee.

e. *Finality.* Action on a complaint shall be considered final, and the complainant will have exhausted his administrative remedy under Article 138, UCMJ –

(1) When the action taken by the Secretary states that the action of the officer exercising general court-martial jurisdiction is approved.

(2) If the file is returned or is referred to another command or office for corrective action or for further investigation, when the directed action has been completed and the report of such completed action has been reviewed by the Secretary.

(3) When no action is taken by the Secretary within 60 days of receiving the complaint, or within 60 days of receiving the report of action described in the preceding subsection. (This subsection is not applicable to complaints forwarded to the Secretary for original action pursuant to subsection 1105b).

Exhaustion of remedy under Article 138, UCMJ, has no bearing upon remedies which may be available under other statutes or regulations, including the Board for Correction of Naval Records and remission-of-indebtedness procedures.

CHAPTER XII

ADMIRALTY CLAIMS

1201 SCOPE

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1213 PERSONAL INJURIES

1214 SALVAGE

1215 TOWAGE AND PILOTAGE

1216 DAMAGES

1217 SUMMARY

1201 SCOPE

a. This chapter applies to admiralty-tort claims. The purpose of this chapter is to assist forces afloat and ashore in the handling of matters involving admiralty law. It should be helpful both to commanding officers and judge advocates in reporting, investigating, and processing admiralty incidents. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property. Most collisions involve claims both by and against the Navy. It is not intended to present a comprehensive exposition of admiralty law. It is intended to serve only as a summary of the Navy's practices in admiralty matters. This chapter does not apply to incidents involving only U.S. naval vessels or property.

b. Admiralty is a specialized field of law. Its doctrine of mutual or proportionate fault is contrasted with the common law rule of contributory negligence as a complete defense. It has particular doctrines such as salvage, general average, and limitation of liability. While admiralty is itself a specialty, it is further subdivided into such specialties as collision, personal injury, cargo damage, charter parties, salvage, general average, etc. The Navy's admiralty practices and procedures represent a still further refinement in this specialized field.

c. The broad scope of this chapter is emphasized. It does not provide sufficient working instructions for dealing conclusively with particular matters or with admiralty claims. It does indicate broadly the procedures which are available. It also indicates where assistance and additional information may be obtained. *See* Appendix A-12-b.

d. The prime requisite in the effective handling of admiralty claims is to send *immediate notice* of any occurrence, however trivial it may seem, to the Admiralty Division of the Office of the Judge Advocate General and to the local judge advocate afloat or ashore. Such prompt reporting aids the proper investigation and disposition of admiralty claims under the Secretary of the Navy's statutory-settlement authority. It also protects the interests of the Government in cases which may reach litigation.

1202 ORGANIZATION

a. The Secretary of the Navy has administrative authority for settlement and direct payment, where the amount paid does not exceed $1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels. 10 U.S.C. §7622 (1970). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy. 10 U.S.C. §7623 (1970).

b. The Navy's admiralty-tort claims are handled in the Admiralty Division of the Office of the Judge Advocate General. Admiralty Division judge advocates are admiralty officers who have received specialized training in the Navy's admiralty practices. In addition, there are stationed in several naval legal service offices and district or naval base staff judge advocate offices, judge advocates who are also trained admiralty officers, and they act locally in admiralty matters.

c. These admiralty officers in the various naval districts and the Admiralty Division of the Office of the Judge Advocate General are prepared to offer advice, assistance, and guidance in the handling of all admiralty matters. Any question which may arise with respect to the applicability of this chapter or the handling of a particular incident may be referred to an admiralty officer or to the Judge Advocate General with a request for instructions and guidance.

d. The primary mission of the Admiralty Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists. The procedures described in this chapter are designed to accomplish that end.

e. The procedures outlined in this chapter are also designed to relieve forces afloat of the labor and difficulty which result when admiralty matters are not promptly reported and adequately investigated in the first instance. Instead of developing an independent investigatory procedure, certain essential requirements have been grafted upon the Navy's existing procedures. These requirements are intended to preserve evidence which may develop in appraising civil liabilities or in litigation. For example, they include the preservation of all original documentary data and the holding of damage surveys.

f. Certain aspects of civil liability may not be apparent to the naval command which is considering the administrative or disciplinary features of a particular casualty. The procedure which has been developed is intended to obtain all the necessary information in the first instance, when it is readily available. Therefore, the aim is to relieve operating units of continued inquiries and requests for information which would take place if matters were investigated and checked only as each stage developed. For instance, data as to repair costs and the detention claim of a naval vessel are developed during and at the end of the repair period, before necessary records have become dispersed.

g. The basic essentials are immediate notice of a potential claim and contact with the local judge advocate to arrange for a survey. Major difficulties arise when these requirements are disregarded.

h. As indicated above, the Admiralty Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy and claims for damage caused by a privately-owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

i. Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space of the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

j. Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

k. Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty Division, irrespective of whether a MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty Division and the Office of Counsel, MSC, as to how the incident should be handled.

1203 NAVY LIABILITY

a. This section sets forth the basis of governmental liability for damage caused by Government vessels or by other property under the jurisdiction of the Department of the Navy or damage caused by a maritime tort committed by an agent or employee of the Navy.

b. The old concept of the Government's sovereign immunity against liability for damage has long been abandoned in the admiralty field. Suits based on admiralty claims may be brought against the United States under either or both of the following Acts:

Suits in Admiralty Act, 46 U.S.C. §§741-752 (1970)

Public Vessels Act, 46 U.S.C. §§781-790 (1970).

c. The Suits in Admiralty Act prescribes a procedure for bringing suit against the United States on a claim which could be asserted in admiralty if a private person or a privately owned vessel, cargo, or other property, were involved. It provides that a complaint *in personam* may be brought against the United States in such cases, but that the Government vessel or cargo shall not be subject to arrest or seizure. As amended by Public Law 86-770 of 13 September 1960, the Suits in Admiralty Act now constitutes a broad waiver of sovereign immunity in the admiralty field. Therefore, whenever a suit in admiralty can be brought against a private party or vessel, a suit can be brought against the United States in like circumstances.

d. Supplementing the Suits in Admiralty Act is the Public Vessels Act, enacted in 1925. All naval vessels are public vessels and litigation in connection with damages caused by such vessels must proceed under the Public Vessels Act. This Act allows a complaint *in personam* in admiralty against the United States "for damages caused by a public vessel of the United States." This is primarily a tort liability.

e. There has been extensive litigation as to what constitutes "damages caused by a public vessel." The Department of Justice in early litigation took the position that the Government's liability was restricted to situations of physical contact or collision between vessels. Initial court decisions held that the Public Vessels Act could provide appropriate relief only in those admiralty cases dealing with property damage. The Supreme Court in *American Stevedores, Inc. v. Porello et al.*, 330 U.S. 446, 1947 A.M.C. 349(1947), held conclusively that the Public Vessel Act makes the United States also liable for damages involving personal injuries.

f. There has evolved a gradually expanding judicial concept of what constitutes damages caused by a public vessel. For example, the following situations, in addition to collisions or actual physical contact, are within the Public Vessels Act:

(1) Swell damage or wave wash.

(2) Damage to fish nets or traps, lobster pots, oyster beds, clam flats.

(3) Damage to commercial cargo carried in a Navy bottom.

(4) Personal injury or death of a civilian not employed by the Government (including longshoremen, harbor workers, repairmen, visitors, passengers, guests).

(5) Damage resulting from oil spills, paint spray or blowing tubes.

(6) Damage to third parties resulting from a fire or explosion on board a naval vessel.

g. There are, however, certain categories of individuals who do not come within the expanded scope of the Public Vessels Act. In the *S-51-CITY OF ROME* case, *Dobson, Administratrix v. U.S.*, 27 F.2d 807, 1928 A.M.C. 1583 (2d Cir. 1928), the Court of Appeals for the Second Circuit held that the system of benefits provided by the Government indicated a Congressional intent not to permit suits by naval personnel for injuries, death, or other damages resulting from negligence of public vessels. However, injuries to individuals on a privately owned vessel, as a result of collision with a naval vessel, are subject to suit under the Public Vessels Act.

h. Similarly, civil-service officers and seamen who man MSC vessels cannot maintain suit against the United States for personal injuries or illness, but are relegated to their remedies under the Federal Employees' Compensation Act, 5 U.S.C. §§8101-8150 (1970). This was decided by the Supreme Court in the *Johansen* and *Mandel* cases; both reported in *Johansen v. U.S.*, 343 U.S. 427, 1952 A.M.C. 1043 (1952). These personnel are, of course, employees of the United States.

i. Seamen who man the tankers operated by private contractors under MSC, pursuant to cost-plus-fixed-fee contracts, have the usual rights of merchant seamen in case of injury or illness, which include the right to bring suit against their employer for wages, maintenance and cure, and personal injury. It has been determined that the United States, as shipowner, though not the direct employer of the crew, is the proper party defendant in an action based on the Jones Act, 46 U.S.C. §688 (1970), for personal-injury damages; *Petition of the United States and Mathiasen's Tanker Industries, Inc.*, 289 F.2d 237, 1966 A.M.C. 1943 (3rd Cir. 1966).

j. In its original form, the Public Vessels Act provided a remedy for "damages caused by a public vessel." A 1960 amendment to the Suits in Admiralty

Act, the provisions of which are applicable to the Public Vessels Act, broadened the scope of the remedy to include all areas in the admiralty jurisdiction wherein suit could be brought if a private person, or a privately owned vessel, cargo, or other property were involved 46 U.S.C. §742, *as amended*, 46 U.S.C. §782 (1970).

k. While admiralty jurisdiction in the United States did not originally extend to damage caused by a vessel to a land structure, such as a pier or wharf, this situation was altered by the enactment in 1948 of long-pending legislation to bring such matters within the admiralty jurisdiction. This legislation, The Admiralty Jurisdiction Extension Act, 46 U.S.C. §740 (1970), brings the English and American concepts of admiralty jurisdiction into conformity on this point. The result is that the owner of a shore structure may now proceed *in rem* in admiralty against a vessel which damages his shoreside property. Therefore, with respect to damages caused by a naval vessel, the United States is liable to suit under the Public Vessels Act whether the damage takes effect on the water or on the land.

l. However, liability may also arise from damages caused by other property or by maritime torts. For such damages to come within the purview of this chapter, they must have commenced or occurred on navigable waters. The following are some examples of damages caused by other property, or by maritime torts committed by an agent or employee of the Navy:

(1) Damage caused by improper handling of pier fenders or camels, or by such fenders or camels which were floating free in a slip or harbor after breaking loose from their moorings;

(2) Damage to fishermen's nets or vessels caused by lost or sunken ordnance;

(3) Damage caused by negligent operation of airplanes, helicopters, and drones on navigable waters;

(4) Damage caused by improperly lighted, marked, or placed buoys or other such aids to navigation for which the Navy is responsible;

(5) Damage attributable to Government structures surrounded by navigable waters, such as artificial islands or structures which might not be lighted or properly lighted;

(6) Damage caused by negligence of Navy civil-service pilots to commercial ships at Navy installations;

(7) Damage to commercial ships caused by negligence of civil-service longshoremen;

(8) Damage to a commercial ship caused by Government personnel in the operation of a gantry or shoreside-operated crane or train.

m. Suits under the Public Vessels Act must be filed within two years after the incident on which the cause of action is based. If suits are not timely filed, the court has no jurisdiction to entertain them. This limitation cannot be waived administratively, nor is the running of the statutory period tolled by the filing of a claim with a Government department, nor by corresponding, nor by negotiation. The same two-year statute of limitations applies to the Navy's settlement authority, 10 U.S.C. §7622 (1970). A statement as to the nature of the Secretary of the Navy's settlement authority, setting forth these limitations, is usually included in the initial correspondence with claimants or their counsel. This avoids a possible future assertion by a claimant that he was misled as to his legal remedies or as to the statute of limitations.

n. Suits under the Public Vessels Act must be brought in the United States district court for the district in which the vessel charged with creating the liability is found within the United States, 46 U.S.C. §782. If the vessel is outside the territorial waters of the United States on the date the complaint is filed, the suit may be brought where the plaintiff resides or has an office. If the plaintiff does not reside or have an office in the United States and the vessel is outside the territorial waters, suit may be brought in any district.

o. When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement. Thereafter, the Navy assists the Department of Justice in preparing the case for trial, drafting suggested pleadings, and occasionally assisting at the trial itself. Payment of final decrees or of settlements negotiated by the Department of Justice, once a matter is in litigation, is made from that Department's settlement appropriation, if not in excess of $100,000. If greater than that amount, payment is made from a specially enacted judgement appropriation.

p. Although the Public Vessels Act is primarily a tort or negligence statute, it does include two instances of a contractual nature. Thus, suits may be brought under this Act for towage and for salvage services, including contract salvage, rendered to a public vessel of the United States. These would include salvage claims asserted by the crew of a privately-owned vessel.

1204 CLAIMS AGAINST THE NAVY

a. 10 U.S.C. §7622 (1970), as amended, by Public Law 92-417, 86 Stat. 654, provides settlement authority for "(1) damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy." The limit on the Secretary's settlement authority is a payment of $1,000,000. A claim which is settled for an amount over $1,000,000 is certified to Congress. Section 7622 now provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $10,000. Under the Secretary's delegation, settlements not exceeding $10,000 may be effected by the Judge Advocate General, Deputy Judge Advocate General, Assistant Judge Advocate General (Civil Law), and the Deputy Assistant Judge Advocate General (Admiralty). Authority has also been delegated to Commander in Chief, U.S. Naval Forces, Europe, and to Commander, Sixth Fleet, to pay admiralty claims against the Navy not exceeding $1,000.

b. The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

c. Where the amount paid is over $10,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for executed releases. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. §7622 are paid out of the appropriation "Claims, Department of Defense."

d. The Secretary's settlement authorization is subject to a two-year limitation. This limitation has been publicized in the Federal Register and now appears in title 32 C.F.R., Part 752. While this publication constitutes sufficient constructive notice, it is the practice in dealing with claimants to advise them at the outset of the two-year limitation, and that this limitation is not extended by the filing of claim nor by negotiations or correspondence. This procedure avoids any charge that claimants were misled as to their remedy or were permitted to believe that the filing of claim tolled the statute. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

e. To expedite settlements and to avoid long, drawn-out negotiation, in some situations a conclusion is reached in the Admiralty Division as to what is considered a fair settlement and one which would be approved under the authorization of the Deputy Assistant Judge Advocate General (Admiralty). That information is then conveyed to the claimant or counsel. The facts that authorization is available for a definite sum and that the claim does not require further approvals are very often effective in disposing of claims which would otherwise involve lengthy discussions.

f. Situations where the claimant is advised to forward his repair bill and that the Navy will "take care" of the matter are to be carefully avoided. They may serve as the basis of charges of an admission of liability by the Navy and may mislead claimants. Similarly, any informal, off-the-record assurances of probable recognition of a claim should be avoided.

Only the Secretary of the Navy, and his designee in matters not exceeding $10,000, may authorize settlement. Communications to claimants should state that they are "without prejudice" and do not constitute an admission of liability. This qualification, which is in keeping with admiralty practice, is to avoid possible prejudice in the event of litigation. Negotiations with a claimant should be handled only by the Admiralty Division or by a judge advocate, and all requests for information as to the status of admiralty claims should be referred to the respective admiralty officer handling the case.

g. In dealing with particularly involved cases, it is sometimes the practice to dispose of liabilities first and then deal with questions of damage. This procedure corresponds to the practice in litigated matters in admiralty where the district judge passes on the issue of liability. The case is then usually referred to a commissioner (normally an admiralty lawyer) to hear evidence on the issue of damage and to make a report to the court. Further proceedings are held on the basis of the commissioner's report.

h. In some situations in which repairs have been made, damages are not liquidated before the expiration of the two-year period. In such cases, it may be possible to settle on the basis of the estimated cost of repairs, thus disposing of the claim before the expiration of the statutory period. In other cases, settlements have been arranged on the basis of a percentage of provable damages, thereby eliminating the issue of liability and leaving the damages to be agreed on later.

i. However, unless a complete settlement can be approved before the statute of limitation runs, a claimant is well-advised to file a protective complaint. Settlement negotiations which had been underway at the time of filing of the complaint could then be continued with the Department of Justice representing the Government. Settlement short of trial on the merits could then be finalized by an offer of judgment and consent decree.

j. Certain claims arising in a foreign country can be handled either as admiralty claims or foreign claims. As indicated in section 2217 of this Manual, such claims are not to be handled as foreign claims without the authorization of the Judge Advocate General.

k. No admiralty claim file or related index card will reflect catalog information other than the name of the Navy property, type of injury, date of incident and Admiralty Claim Control number assigned the incident by the Admiralty Division. In no event will the name of any individual claimant or any other identifying particular be assigned to link that individual to the file or to an index system of any sort. Strict adherence to the foregoing precludes the creation of a "system of records" within the meaning of the Privacy Act of 1974 (5 U.S.C. § 552a), thereby freeing these files from the constraints of that Act but effecting the congressional mandate to protect the right of privacy of the individual.

1205 AFFIRMATIVE CLAIMS

a. The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. §7623 (1970), and is the reciprocal of 10 U.S.C. §7622 (1970), referred to in section 1204, *supra*.

b. The two settlement statutes were drafted to provide similar procedures for the two types of claims. Section 7623 was enacted to eliminate a question which had been raised as to the authority of the Secretary of the Navy to compromise and settle affirmative admiralty claims in the absence of an express statute. This statute also set at rest another question which had been raised as to the authority of the Secretary of the Navy to execute a full release of a claim on behalf of the United States and to deliver this release in exchange for payment. The form of release used is comparable to that used by the Maritime Administration with which admiralty practitioners are generally familiar.

c. The $1,000,000 limitation on settlement is the same as in claims against the Navy. The same delegation of settlement authority, in similar amounts, has been made by the Secretary of the Navy, with the exception that Commander in Chief, U.S. Naval Forces, Europe and Commander, Sixth Fleet do not have authority to settle affirmative claims. Amounts received in settlement of affirmative admiralty claims are paid into the Treasury of the United States, with one exception. Where the cost of repairs to damaged Navy property has been charged to an Industrial Fund, such fund will be reimbursed up to the amount which has been paid out of the fund. These credits are handled through the Admiralty Division.

d. 10 U.S.C. §7623 is a tort-claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

e. This Act also granted settlement authority with respect to damage to property for which the Department of the Navy has assumed an obligation to respond for damage. This provision related to subrogated claims which accrue in favor of the United States. An example would be where the Navy has leased a privately owned pier which is damaged by a commercial vessel. The Navy's obligation to respond to the pier owner for the damage gives it a right to recover from the party inflicting the injury. A similar situation exists where Navy property has been leased to private interests, under conditions whereby the Navy assumed the risk of loss or damage to such property.

f. Considerable difficulty has occasionally been experienced in handling matters of this latter type. The claims are often handled administratively in the first instance, either by the lessee of the property or by the office administering the lease for the Navy. If collection is not made, however, the cases are referred at a later date to the Office of the Judge Advocate General. Unless the rights of the Government have been adequately protected, such cases may encounter all the difficulties of "stale" claims. Frequently no notice of claim has been served on the vessel causing the injury or its agents. The requirement of survey has also often been overlooked, so that proof of damage may be very difficult.

g. To assist in collecting these claims for damage to leased property, it is necessary that action prescribed herein be taken as soon as possible after they arise. The Admiralty Division should receive prompt notice of any claims where recoupment could be handled under this statute. The local judge advocate also should be requested to assist in serving notice of claim on opposing interests, arranging a survey and preparing damage data. Close contact should be maintained between the District Judge Advocate and the local U.S. Navy Supervisor of Shipbuilding, Conversion and Repair, Public Works Officer, or other cognizant command or activity in order to assure early reporting of such casualties. The local judge advocate should always be informed of a situation where the Navy has a contract responsibility and where there is any possibility of an affirmative claim for damage caused by a privately owned vessel under 10 U.S.C. §7623.

h. The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the *res* or defendant and certain exemptions from legal process. 28 U.S.C. §§2415, 2416 (1970).

i. Survey is perhaps even more essential with respect to claims in favor of the United States. The Government as a claimant has the same obligation as a private claimant to give the offending party a chance to survey the alleged damage. Failure to afford an opportunity for survey results in a very heavy burden of proof upon the claimant to establish its damages. Survey procedure is discussed in section 1210, *infra.*

j. 10 U.S.C. §7623 does not apply to any claim where suit is filed. If the Admiralty Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

k. Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. §7365 (1970). Prosecution of such claims is handled in the first instance by the Assistant Supervisor of Salvage, U.S. Navy, Rm. 1313, 90 Church St., New York, N.Y. 10007. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. §7367 (1970). Salvage matters are further discussed in section 1214, *infra.*

1206 IMMEDIATE PRELIMINARY REPORT

a. Every incident involving a possible admiralty claim for or against the Government (as discussed in the preceding sections) must be reported immediately by rapid means to the Office of the Judge Advocate General (Admiralty Division). Such message should be forwarded to the appropriate naval district or area command to which a judge advocate is attached for information. These reports are in addition to, and not in lieu of, other reports which may be required by seniors in the chain of command and the Chief of Naval Operations. (*See, e.g.,* article 0743, U.S. Navy Regulations, 1973.) However, the report required by this section may be combined in appropriate cases with a report required by other directives, by making the Judge Advocate General and the cognizant judge advocate in the field addressees of the message.

b. The purpose of reporting a casualty to the local judge advocate is to permit him to take preliminary action with respect to civil liabilities and make arrangements for survey of the damage. Upon receipt of notice of a possible admiralty claim, the local judge advocate will assist forces afloat in the following ways:

(1) Arrange for a survey of the damage and provide for a qualified marine surveyor to represent the Navy.

(2) Indicate the extent of any investigation which may be required, so far as the civil liabilities are concerned, and advise and assist in such investigation if necessary.

(3) Conduct all dealings and negotiations with opposing interests when so directed by the Admiralty Division.

c. Any correspondence, letters of claim, or demands received by a commanding officer from opposing interests may be forwarded to the cognizant judge advocate or to the Judge Advocate General for handling and reply. All naval personnel are cautioned against giving statements to opposing interests or making any admission which might prejudice the Government's case.

d. Report control symbol JAG 5880-1 is assigned to this report.

1207 SUBSEQUENT INVESTIGATIVE REPORT

a. The preliminary message report, discussed in section 1206, *supra*, must be supplemented as soon as practicable by a further written investigative report covering the facts and circumstances of the casualty and including such documents, statements, photographs, and further data as may be required in the particular case. This written investigation report will be either a JAG Manual Investigation as defined in section 0201a(2) of the *JAG Manual*, or a letter report as set forth *infra* in this section. Discussion now follows on the general considerations which determine whether a JAG Manual Investigation or a letter report is appropriate.

b. A casualty of major importance or of a serious nature will normally be the subject of a JAG Manual Investigation fact-finding body. This decision is made by the cognizant convening authority pursuant to chapter II and section 0906 of the JAG Manual. When a JAG Manual Investigation is ordered, the report of the court of inquiry or investigation can also serve the requirements of the Admiralty Division and the local judge advocate with respect to civil liabilities. If the report is to serve such purpose, the investigating officer or body should make certain to include all information needed to handle potential claims which may arise from the incident. The local judge advocate can be of assistance in this regard by indicating points which must be developed.

c. When the report of a fact-finding body is meant to serve such a dual purpose, it is important that the Admiralty Division be informed immediately of the facts developed rather than waiting for the completion of the investigation. Potential civil liabilities must be dealt with promptly. The ability to adjust claims without litigation may be prejudiced by delays in the receipt of a report of investigation.

d. An advance copy of every report of investigation involving a possible admiralty claim should be forwarded directly to the Office of the Judge Advocate General (Admiralty Division) as soon as it is available. If appropriate, another copy should go to the local judge advocate. If it appears that the report will be delayed and that preparation of findings of fact, opinions, and recommendations will require some time, a copy of the evidence taken by the investigation should be forwarded as it is transcribed. This can be handled by instructing the reporter to prepare an additional copy of the testimony. The essential requirement is that the Admiralty Division get the basic testimony of the witnesses as soon as possible. In order to avoid litigation, many aspects of the civil liabilities will have to be dealt with before the investigative procedure has been completed.

e. Certain incidents of a minor nature will not require a JAG Manual investigation. In such event, a letter report must be submitted to the Judge Advocate General and, if appropriate, to the local judge advocate. The form in which a possible admiralty claim is reported is of less importance than the requirement that the circumstances and facts be completely and promptly developed. The distinction between a letter report concerning an Admiralty claim and a JAG Manual investigation, as defined in section 0201a(2), should be noted. Letter reports which are prepared solely for use in conjunction with Admiralty claims files should be cataloged, as should their file and cross index cards, as outlined in section 1204k.

f. In some cases, the investigatory procedure may not cover matters of controlling importance in the determination of civil liabilities, since such factors may not be of primary interest in connection with the basic purpose of the investigation. Here, a supplemental investigative report and additional statements and affidavits may be required. In any event, it is of primary importance, in a case where it appears that litigation may ensue, to have a judge advocate participating in or guiding the fact-finding procedure. In this way, full development of the facts bearing on civil liabilities may be assured.

g. When dealing with investigations of collisions between naval and commercial vessels, personnel of the privately owned vessel will not be designated parties to the investigation or accorded rights as such. Such persons may, however, be invited to appear as witnesses and may be represented by counsel while testifying. Invitations to personnel of a merchant vessel to testify before a Navy investigation are usually declined on advice of counsel. If they do appear, however, neither a witness nor his counsel may be present when other witnesses testify.

h. Witnesses from the privately owned vessel are to be furnished a copy of their testimony before a naval investigation. This should be made a matter of written record, and the witness should be requested to advise of any errors in his testimony. This procedure increases the value of the record and its possible effectiveness in later litigation for impeachment purposes. In contrast, a typed copy of testimony which a witness has never seen and which is produced years later in an effort to impeach him is of little practical value. Opposing interests are not furnished a copy of the record of investigation or any information as to the testimony of naval witnesses.

i. An investigation, as distinguished from a court of inquiry, does not have subpoena power. Even in the case of a court of inquiry, it is usually not advisable to subpoena witnesses from a merchant vessel to testify in a case involving collision with a naval vessel. The fact that merchant marine personnel were required to testify before the Navy court would no doubt result in a motion to produce the record of the Navy inquiry in any subsequent litigation.

j. Report control symbol JAG 5880-2 is assigned to this report.

1208 WITNESSES

a. Procedures for furnishing naval records, witnesses, and data for use in litigation between private parties are set forth in chapter XIII of the *JAG Manual*. The procedure varies depending on whether a matter is in the litigation or prelitigation stage.

b. Section 1330 of the *JAG Manual* outlines the manner in which Navy records may be obtained in litigation between private parties through the use of a court order. It also establishes a more informal procedure whereby, upon the written request of all parties in interest or their counsel, naval records may be produced without a court order. Section 1324 indicates how naval personnel may be interviewed on behalf of private parties either before or during litigation.

c. In any suit under the Public Vessels Act, section 4 of the Act (46 U.S.C. §784) precludes the issuance of a subpoena in suits against the United States to personnel of a public vessel without the consent of the head of the department or activity of the Government which has control of the vessel. In such litigation, naval records, data, and witnesses are, of course, made available to the Department of Justice, which represents the interests of the Government. If naval witnesses are subpoenaed in private litigation, where the Government does not have interest, the provisions of sections 1320, 1321, and 1322 of the *JAG Manual* apply.

d. The attendance of naval witnesses is often requested at hearings conducted by the United States Coast Guard in connection with the investigation of marine casualties. The Coast Guard has investigative responsibility in marine casualties involving loss of life, violations of the navigation and inspection laws, and incompetence or misconduct of licensed and certificated personnel. The Coast Guard is interested in both the investigation of such casualties and in possible disciplinary proceedings against personnel who are licensed or certificated by the Coast Guard. A Coast Guard investigation may take place before an individual investigating officer or, in the case of a major casualty, before a marine board of investigation.

e. Only personnel who function under a license or certificate from the Coast Guard are subject to its jurisdiction. Naval personnel are exempt, as are those on public vessels. In most proceedings a right to cross-examine witnesses is afforded, and these Coast Guard hearings take on the aspects of a preliminary trial. Through the participation of counsel for the respective vessels, the facts of a marine casualty may be very thoroughly developed at such a hearing.

f. In collisions involving a naval vessel and a private vessel, naval personnel or employees may not be compelled to testify without the Navy's consent. If the Coast Guard requests the attendance of Navy witnesses, its request is normally addressed to the local judge advocate or the senior naval officer present. The final decision as to whether naval personnel will appear as witnesses at any Coast Guard hearing is made by the Office of the Judge Advocate General. The primary consideration in making this determination is the Navy's interest in the adjustment of its claims and litigation. No general rule will cover all cases. The determination of the Admiralty Division will depend on the circumstances of a particular case.

g. In the ordinary situation there exist factors which militate both for and against the production of Navy witnesses at a Coast Guard hearing. Production of the witnesses may subject them to searching cross-examination, resulting in full disclosure of the Government's case. The evidence will normally be of the same nature as would be brought out upon a subsequent trial before a Federal district court. Accordingly, if Navy witnesses are produced, it is essential that the interests of the Government be represented by competent admiralty counsel, either from a Navy legal office or from the Department of Justice, or both. Such counsel will assure that the Government is properly represented, both in examination of the Navy witnesses and cross-examination of the opposing party's witnesses.

h. Assuming that proper representation can be had, in certain cases it is advantageous for the Navy to make its witnesses available to the Coast Guard. After all aspects of a particular case have been brought out in a Coast Guard hearing, and each party knows the strengths and weaknesses of his own and his opponent's case, it may be easier to arrive at a settlement of the civil liabilities without resorting to litigation. Appearance of Navy witnesses before the Coast Guard should also effectively preclude any motion for discovery of the record of a naval investigation into the same subject matter. Where opposing interests have had an opportunity to cross-examine Navy witnesses at the Coast Guard hearing, it is unlikely that they can later show good cause for the production of the record of a naval investigation in a Federal district court.

i. The Navy's policy has been to assist the Coast Guard in carrying out its investigative functions by making naval personnel available as witnesses where no injury to paramount Navy interests is involved. Where no civil liabilities are involved or where they have been disposed of by settlement, naval personnel can, of course, be made available in any case as a matter of cooperation. In some cases, copies of the Navy's reports or records may serve the requirements of the Coast Guard without the necessity for the appearance of witnesses. In such event, the record may be turned over on condition that it be used exclusively for the purposes of the Coast Guard and not be made a part of the public Coast Guard record, which would also make it available to private interests. If settlement of the civil liabilities can first be made, this will also permit production of Navy witnesses at a later date, although the initial request may have to be refused.

j. These considerations do not exist where a naval vessel is in collision with a Coast Guard, Maritime Administration, or other Government vessel, where no civil liabilities can be asserted. This section, also, does not have any application to investigations conducted by the Navy. In addition, it applies only in part to the naval tankers which are manned by civilian crews, who are hired by the shipping company which operates the tanker under contract with the Navy. While such personnel hold licenses or certificates issued by the United States Coast Guard, the Coast Guard's investigatory jurisdiction does not extend to casualties involving these vessels (46 C.F.R. §§136.03-40, 136.11-1). By agreement, however, the Coast Guard does investigate these casualties unless specifically requested not to do so by MSC (COMSCINST 3121.3C, p. 1-79). The decision of whether to request the Coast Guard not to conduct an investigation of a collision with a commercial vessel is made on a case by case basis by COMSC after consulting with JAG. In those situations where these civilian crew members are summoned to appear before the Coast Guard, notice must be sent to the Office of the Judge Advocate General (Admiralty Division). The Admiralty Division will then arrange for legal representation to protect the interests of the Government in the claims arising out of the incident.

k. A basic consideration in determining whether to make Navy personnel or employees available to the Coast Guard is the preservation of the position of the United States in litigation. Subject to this consideration, all possible assistance and cooperation are afforded in admiralty matters to any Governmental investigating unit. In sum, because of the various considerations involved, all requests for the appearance of Navy witnesses at Coast Guard hearings, whether the case apparently involves a naval vessel or not, should be referred to the Admiralty Division for determination.

l. The same policy applies to hearings before the Panama Canal authorities, and before investigating bodies of foreign countries. Each case must accordingly be decided on its individual merits.

1209 DOCUMENTS

a. United States district courts attach particular importance to original documents of first entry in admiralty matters. Their preservation is absolutely necessary in collision cases.

b. Basic documentary data are to be forwarded to the Judge Advocate General (Admiralty Division) as soon as practicable after a major collision. If a matter is being investigated by a fact-finding body, such data are also required by that body. These requirements can be met by attaching photostatic copies of pertinent documents to the record of the investigation, while the originals are sent forward directly to the Admiralty Division as soon as copies have been made. If an essential original document is not available at a trial, the Government's position in litigation may be materially prejudiced. Therefore, it is most essential to prepare and retain photostatic copies of pertinent records as a safeguard against loss during transmission.

c. To avoid having original Navy logs held for a long period of time or attached to court records in litigation, it is the practice for the Admiralty Division to prepare certified photostatic copies. This procedure avoids the necessity for introducing the original logs into the court record. The original record sometimes is required at the trial, however, for the purpose of comparison, especially where there is any issue of alleged alteration or erasure in the document. The original log is for inspection purposes only and does not become a part of the court record.

d. Everyone should be familiar with the requirement that no erasures be made in a logbook or any original navigation record. If any entry must be corrected, the original is to be lined through in such a manner that it is still legible and the correction inserted so that no question arises as to the nature of the original entry. Both the original entry and the correction should be initialed by the person making the entry.

e. Where navigational data are first recorded in a notebook or on individual sheets of paper, before their entry in a log or in a quartermaster's notebook, these records of first entry must be preserved and forwarded. Conflicts between the times of entries in the quartermaster's notebook, deck log, and engineroom records cause frequent difficulty in litigation. To avoid such issues arising out of a difference between bridge and engineroom clocks, a record of comparison of such clocks should be made as soon as possible after a collision or other casualty. On vessels equipped with a course recorder, this device should also be compared with bridge and engineroom

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clocks, and discrepancies noted. Where a fathometer was in use, the same applies.

f. Radar records have assumed an increasing importance in recent years by reason of court decisions holding that a vessel is chargeable with the knowledge which her radar would have disclosed if it had been efficiently used. Consequently, radar records or logs must be carefully preserved. If a vessel's radar was in operation but no written record was being maintained, a detailed statement of the radar operator should be immediately prepared, with particular emphasis on times, ranges, and bearings.

g. Not all original logs and records will be relevant in every case. Although all such records would probably be of importance in a major collision, some of them would contain no information of value in a case of minor damage to a shore structure. Depending on the circumstances of the particular case, the following are among the original records which must be preserved and forwarded to the Admiralty Division:

(1) Quartermaster's Notebook.

(2) Smooth Deck Log.

(3) Bell Book.

(4) Engineering Log.

(5) Chart in use.

(6) Bearing Book.

(7) Magnetic Compass Record.

(8) Deviation data, azimuth records, and course recorder record.

(9) CIC Logs.

(10) Radar Logs.

(11) DRT plot (place or course recorder).

(12) Radar Plot.

(13) Communication and Signal Logs.

(14) Voice Radio Log.

(15) Night Order Book.

(16) Fathometer Record.

h. Although photographs do not constitute original documentary data, they are an extremely valuable adjunct to an investigation. The Department of Justice has repeatedly emphasized their value in litigation. In collision cases, photographs which indicate the angle of collision and extent of damage are most valuable. They are also essential in personal-injury litigation where there is an issue of alleged defects in a vessel's tackle, gear, or appurtenances. Many ships have an officially designated ship's photographer. In peacetime, officers and crew members are normally permitted to retain cameras. After a collision, the ship should be canvassed for persons who may have taken relevant pictures.

i. The value of a photograph increases with its nearness in time to the incident involved. Where photographs are taken there must be recorded on the reverse side of the prints or elsewhere the hour and date the photographs were taken; a detailed description of the location or area photographed; the name, rate, and social security number (SSN) of the photographer; and the names and addresses of the persons present when the photographs were taken. Care should be taken to preserve the negatives. These requirements are important in order that the photographs can be properly authenticated and identified by witnesses for possible use in litigation.

1210 SURVEYS

a. Surveys both of a naval vessel and of a privately owned vessel involved in an incident are absolute essentials in the Navy's admiralty-claims procedure. The requirement applies not only to collisions but also to any maritime incident involving potential Government liability for property damage as outlined in section 1203, *supra*, and to damage caused by a privately owned vessel to Navy property as outlined in section 1205, *supra*.

b. The Navy's survey procedure follows a practice of long standing in the commercial maritime field. It is designed to eliminate burdensome and difficult questions of proof of damage. The difficulties of proving vessel damage where no survey has been held are well illustrated in the Commissioner's Reports in the *CHICAGO-SILVERPALM* and *EVANSVILLE-MARBLEHEAD* cases; *U.S. v. M/S SILVERPALM*, 1937 A.M.C. 498 (N.D. CAL 1937); *U.S. v. SS EVANSVILLE*, 1941 A.M.C. 62 (E.D.N.Y. 1940). The primary purpose of a survey is to eliminate later controversy as to the items of physical damage caused by a collision. Failure to afford opposing interests an opportunity to survey collision damage places a very heavy burden of proof on the party later seeking to establish such damage. *See, Patton-Tully Transportation Company v. Barrett*, 37 F.2d 516, 1930 A.M.C. 970 (C.A. 6 1930); *THE WESTCHESTER*, 254 Fed. 576 (C.A. 2 1918).

c. The survey practice discussed here is the formal, technical, joint survey held by representatives of the two (or more) parties involved. It is not a mere *ex parte* appraisal, such as may be used in determining the extent of damage in the Navy's investigatory procedure or in connection with the disposal of naval material. Each party normally appoints its own surveyor who, with the other surveyors, examines the damage and attempts to reach agreement as to the extent of damage resulting from the casualty. The survey report lists the items of damage and the recommended repairs. Where all parties are in agreement, the practice is that all surveyors sign the report in order to record their concurrence as to the items of physical damage. Surveyors normally sign without prejudice as to liability. If there is disagreement as to certain points, those points are specifically noted. No surveyor subscribes to any statement in the survey report with which he is not in accord.

d. In some situations, the surveyors may also agree as to the reasonable cost of repairs. In the repair of privately owned vessels, the damage may normally be measured by the reasonable cost of repairs in commercial yards. Where naval vessels are repaired in naval shipyards, the cost cannot be determined in advance. Therefore, it is not the practice for the Navy surveyor to attempt to reach any agreement as to Navy-yard costs, since the work is not being carried out on a commercial basis. The surveyor may, however, submit an independent memorandum of his estimate of reasonable repair costs if the work could be done in a commercial yard.

e. It is important that the surveyor check the repair work as it is accomplished. The question of whether collision damage necessitated a vessel's withdrawal from service may be controlling on the right to recover reimbursement for detention. If other work is being performed concurrently with collision repairs, the nature, time consumed, and necessity for such other work should be reported. These factors are of controlling importance in determining whether a detention claim exists. The surveyor should also furnish his opinion as to whether repairs were accomplished within a reasonable length of time and, if not, the excess involved.

f. In many situations, after the survey is held, specifications will be prepared on the basis of the survey report, bids will be obtained, and the surveyor will approve the lowest bid as fair and reasonable. For all practical purposes, this liquidates the collision repair costs. Where work is not performed under competitive bids, the repair bills submitted by a claimant should be furnished to the Navy's surveyor for his comment as to the reasonableness of the repair costs.

g. Surveys should be held as soon after the collision or casualty as possible. Where a naval vessel has suffered damage, notice of survey at a designated time and place should be served on the local agent for the merchant vessel, or on the master if there is no local representation. Notice of survey is often given orally or by telephone, and later confirmed by letter. Due to vessel movements, survey must often be arranged on very short notice, but as much time as possible must be afforded opposing interests to arrange for attendance. Where such time is not given to the Navy, attendance can be accompanied with a reservation of objections due to inadequate notice.

h. In areas served by a district legal office, the admiralty officer will normally make all arrangements for the survey including notification to opposing interests. However, it is the responsibility of the commanding officer to insure that a survey is held.

i. The Navy's survey procedure is normally accomplished under a standing contract between the Navy and United States Salvage Association, Inc. The Salvage Association is a nonprofit service organization, primarily representing American marine underwriters. It has contract arrangements in other foreign areas, so that its representation is worldwide.

j. The Admiralty Division of the Office of the Judge Advocate General and naval district and area judge advocates have authority to request surveys under the Salvage Association contract. Commanding officers or masters of naval vessels involved in collision can meet the requirement for survey by asking the Judge Advocate General (Admiralty Division) or the nearest Navy judge advocate to act under this authorization. The Navy does not have authority to employ commercial surveyors outside the Salvage

Association contract; all services of this nature must be performed under the contract. Where the nearest representative of the Salvage Association is not known, a message should be sent to the Judge Advocate General (Admiralty Division) requesting that arrangements for survey be made. The Admiralty Division will then get in touch with the home office of the Salvage Association, which will instruct its local representative to act.

k. In some instances, the Salvage Association represents underwriters of a commercial vessel which has been in collision with a Navy vessel. When such a circumstance arises there are three possibilities concerning Navy representation at the survey. These alternatives are listed in order of preference in diminishing the possibility of a conflict of interest:

(1) The Salvage Association should be requested to obtain the services of an independent marine surveyor who will represent the Navy.

(2) The Salvage Association can send two of its own surveyors to the survey, one to represent opposing interests and one to represent the Navy.

(3) If neither of the above is possible, it may be necessary to obtain the services of the best qualified naval personnel or employees in the area to act as surveyors on behalf of the Government.

l. Where the Salvage Association or independent surveyors are not available to act for the Navy, experienced personnel from a naval shipyard, supervisor of shipbuilding, conversion and repair, ship repair facility, or MSC maintenance and repair department, may be used. Because surveys may be held on very short notice, the local judge advocate must ascertain by advance inquiry what qualified personnel are available in the area to represent the Navy when the Salvage Association cannot act. Any questions as to Navy representation at marine surveys which cannot be resolved on the local level should be taken-up by telephone or message with the area or district judge advocate or with the Admiralty Division.

m. Survey reports are normally sent to the area or district judge advocate who initially requested them and whose office then transmits them to the Admiralty Division. The Salvage Association bills the Judge Advocate General periodically for its services. Where the Salvage Association has obtained an independent surveyor to act for the Navy, such surveyor bills the Salvage Association for his fee. The Salvage Association then includes this item in its periodic billing to the Navy.

n. Survey services are also provided to the Department of the Army and Department of the Air Force under the Navy's contract with the Salvage Association as a matter of cross-servicing. The Army and Air Force will request such services through the appropriate Navy judge advocate. The fees for such Army and Air Force surveys will also be billed to the Navy.

o. In cases where damage is claimed to have been caused by a naval vessel, the claimant should be informed that the Navy requests an opportunity to survey the damage as soon as possible. A lapse of time between the casualty and the survey raises the possibility that other damage may have occurred in the interval. Therefore, the cognizant judge advocate should make the request for survey a matter of record in cases where a claim has been made or obviously will be made against the Government. Although the burden is on the private interests to make their vessel available for survey, it is considered preferable for the cognizant Navy judge advocate to make the request in any event, rather than relying on the burden of proof imposed on the claimant for failure to afford an opportunity for survey.

p. Whether or not there is a formal survey, it is incumbent on the Government or the private claimant to establish its damages by the testimony of witnesses. This testimony must first prove what items of damage were in fact caused, the repairs recommended to correct that damage, and the repair specifications and job orders issued authorizing performance of the recommended repairs. Additional witnesses, usually from the repair yard, must then establish that the repairs as authorized were performed and their cost. Full adherence to the survey procedure set forth above substantially reduces the expense and difficulty in establishing a damage claim or defense of a damage claim. For this reason, it is of great importance that these procedures be followed in any admiralty matter in which the Navy is interested.

q. Depending on the identity of the foreign sovereign involved in the particular incident, admiralty survey procedures may apply to collisions between U.S. Navy ships and foreign naval or public ships. In cases where claims can be legally asserted, it has been determined for policy reasons that, in certain special situations, joint survey exchanges will not be held without prior specific approval. OPNAV

Instruction 3040 series establishes policy in such cases. Where doubt exists, advice should be sought from the Judge Advocate General (Admiralty Division).

r. In certain cases survey of a naval vessel or property or parts thereof would result in disclosures of classified information. If this is the case, opposing interests should be notified in writing that, for this reason, survey of the naval vessel or certain parts thereof cannot be permitted. However, every opportunity for a complete survey should be afforded to private interests, if at all possible.

1211 WAIVERS

a. This section deals with collisions between vessels, both of which are owned by the United States and operated by different Government departments. It also applies to damage to property of other Government departments caused by naval vessels. Such claims are subject to waiver. The existence of the waiver is based upon decisions of the Comptroller General to the effect that appropriations of one Government department are not available to pay claims of another. This principle has also been applied by the Comptroller General in a decision involving a Government corporation which obtained its revenues from its operations rather than from Congressional appropriations. *See, Inland Waterways Corporation and Defense Plant Corporation*, 25 Comp. Gen. 49 (1945).

b. Where it appears that only Government interests are involved, investigation with respect to civil liabilities and surveys is not required. The status of the respective vessels is confirmed by correspondence between the Admiralty Division and the other Government agency, and the existence of a waiver is made a matter of record. It is as important to avoid unnecessary labor and expenditure in matters subject to waiver as it is to observe the necessary requirements of investigation and survey where there is no waiver. If there is any doubt as to the status of the other vessel or property, advice should be requested from the Judge Advocate General (Admiralty Division) by rapid means.

c. The situation as to Maritime Administration vessels may cause some confusion. During World War II, by reason of the chartering arrangements and the waiver clauses contained in the WSA (War Shipping Administration) charter party, collisions between naval vessels and all vessels controlled by the WSA (even if privately owned) were waived. That situation has changed materially, and the mere fact of Maritime Administration ownership is not now conclusive. Many Maritime Administration vessels are now operated under bareboat charter. The bareboat charterer is privately insured, and these situations are treated as if the vessel were privately owned.

d. Only where the vessel is operated for the account of the Maritime Administration under a General Agency Agreement is the claim now subject to waiver. This general statement is subject to a further qualification where a Maritime Administration vessel, operated under General Agency Agreement, damages a Navy shore structure. Such claims are paid by the P&I (protection and indemnity) underwriters of the Maritime Administration vessel and are not waived. The interdepartmental waiver applies only to the marine insurance or hull damage type of claim.

e. In addition to inter- and intradepartmental waiver situations involving United States public vessels only, other incidents involving such vessels and the public vessels of certain foreign governments may be subject to waiver.

1212 FOREIGN GOVERNMENT CLAIMS

a. A nation's public war vessels are not subject to jurisdictional process in any other nation. The Supreme Court of the United States has applied the same doctrine to foreign government-owned merchant vessels, *Berizzi Brothers Company v. SS PESARO*, 255 U.S. 216, 1926 A.M.C. 958 (1926). However, a later decision, *Republic of Mexico v. Hoffman*, 324 U.S. 30, 1945 A.M.C. 277 (1945), suggests that restrictions may hereafter be imposed upon the immunity of government-owned merchant vessels which are employed in competive commercial transactions.

b. Ordinarily the courts give controlling weight to the guiding policy of the executive branch of the Government as to whether immunity should be allowed. Current State Department policy adheres to the "restrictive" theory of sovereign immunity rather than the "classical" or "absolute" theory. The restrictive theory recognizes the immunity of the sovereign with respect to sovereign or public acts of a state, but not with respect to private acts of a commercial nature. *See*, Department of Justice policy letter of 19 March 1973. *See also, U.S. v. Tug*

PEMEX XV, 1960 A.M.C. 896 (S.D. TEX 1960) and the so-called "Tate Letter," 26 Dept. of State Bull. 984, 1960 A.M.C. 898 (1952).

c. The United States has waived immunity from arrest of its merchant vessels in foreign countries but not the immunity from arrest of United States naval vessels. If an attempt were made to arrest a naval vessel in a foreign country, the Department of State, at the instance of the Department of Justice, would be requested to file a suggestion of Government interest, and to obtain release of the naval vessel.

d. During World War II many governments requisitioned their merchant vessels. Litigation between the Allies arising out of collisions of their public vessels, apart from its general undesirability, was impracticable since the vessels were immune from arrest. Accordingly, the United States entered into a series of "knock-for-knock" or waiver agreements with the British, Norwegian, Australian, and Canadian Governments, whereby intergovernmental-maritime claims were waived. The test was the ultimate interest of the government concerned. That is, if the loss was one which the government would ultimately bear, the claim was subject to waiver. Salvage claims and general-average matters were also waived.

e. At the present time there are waiver agreements in effect with the British and Canadian Governments, Maritime Transportation and Litigation Agreement with Great Britain, 4 December 1942, 56 Stat. 1780, E.A.S. 282 and Waiver of Claims Involving Government Ships Agreement with Canada, 15 November 1946, 61 Stat. 2520, T.I.A.S. 1582. Under these agreements, all maritime claims that would otherwise lie between the Governments of the United States on the one hand and of Great Britain and Canada on the other, and which arise out of the operation of the public vessels of these respective Governments, are waived. Such cases do not require, for claims purposes at least, the usual investigation and survey.

f. In addition, waiver is provided for in the North Atlantic Treaty Status of Forces Agreement and in the Status of Forces Agreement with Japan. Under Article VIII of the former, intergovernmental admiralty claims for damage to property owned and used by the armed services of one contracting party caused by a vessel of another contracting party are waived, provided that either the damaging vessels or the damaged property was being used in connection with the operation of the North Atlantic Treaty. Under Article XVIII of the Agreement with Japan, the United States and Japan have similarly provided for mutual waiver of claims for property damage caused by members of their defense forces, provided that either the damaging instrumentality or damaged property was being used for official purposes. Similar waiver provisions are contained in the Status of Forces Agreement between the United States and the Republic of Korea.

g. In those cases where an admiralty claim can legally be asserted against a foreign government in other than the situations described herein, prompt notice and investigation procedures remain the same. For procedures regarding survey, see section 1210(q) *supra*.

1213 PERSONAL INJURIES

a. Claims for personal injury and death are assuming increasing importance, both with respect to the expanding volume of such litigation and the larger amounts recovered. In many instances, suits have been filed without any prior notice of claim or any previous report of the incident. This is particularly true where injuries to shoreside workers and longshoremen have been involved.

b. As indicated in section 1203, *supra*, claims for personal injury and death suffered on a naval vessel or caused by a naval vessel or by other property under the jurisdiction of the Department of the Navy, or caused by a maritime tort committed by an agent or employee of the Navy, are subject to suit under the Public Vessels Act. Such claims are also within the Navy's settlement authorization. The same requirements of immediate reporting and investigation apply. The exclusive remedy for civilian employees, including officers and seamen on public vessels, is the Federal Employees' Compensation Act, *Johansen v. United States*, 343 U.S. 427, 1952 A.M.C. 1043 (1952). Injuries to civil service officers and seamen who man MSC vessels are not reported to the Judge Advocate General, but should be reported to the Industrial Relations Division of MSC. However, longshoremen, harbor workers, repairmen, guests, visitors, and dependent passengers are among the categories of persons who may file suit under the Public Vessels Act for their injuries, and it is with these classes of claims that this section is concerned.

c. In all cases of personal injury, after first aid has been rendered, a paramount consideration is immediate physical examination. This examination should be as thorough and detailed as possible under the circumstances. Upon request, a copy of the report of examination, X-rays, photographs, and tests made by the Navy may be furnished to the injured individual. If the injured party declines to submit to a physical examination, this should be made a matter of record by means of a communication addressed to him. Where the exigency of the situation requires, medical treatment in addition to first aid is furnished by the naval vessel or the naval facility involved. Apart from humanitarian aspects, any failure to furnish immediately-required medical service which is not otherwise available would prejudice the defense of a subsequent suit for personal injury.

d. In addition to the usual reports and investigation, any naval vessel on which a person has been injured should have the occurrence entered in her log. Statements should be obtained from all eyewitnesses if possible. Longshoremen and repairmen may be reluctant to give such statements, particularly where one of their fellow workers is involved. In such event, a record should at least be made of the complete names, addresses, and badge numbers of all workmen who saw the casualty, as well as of other members of the group with which the injured man was working. If any naval personnel or Government employees were witnesses, detailed statements should be taken from them.

e. Since liability may be predicated only on negligence of the vessel, a most careful and detailed examination must be made of the locality of the accident. This provides evidence as to the condition of the particular area or apparatus involved for use in possible subsequent litigation. Photographs should also be taken as soon as possible after the accident showing the area where it occurred and the gear or tackle involved. When photographs are taken, notations should be made to permit their identification and to show the circumstances under which they were obtained. The same requirements apply to injuries received by persons ascending or descending a brow, gangway, or accommodation ladder, or to injuries to persons on the dock or pier as a result of events taking place on board the vessel. If the injury has resulted from the failure or giving-way of any of the vessel's gear or equipment, such gear should be carefully preserved where feasible.

f. A trend aimed at expanding Government liability is beginning to emerge in the area of third-party practice. Whereas in direct actions naval personnel and civil service employees traditionally have been held to be barred from suing the Government for personal injuries [the former under the rationale of *Dobson v. United States*, 27 F.2d 807 (2d Cir. 1928), and the latter under the Federal Employees' Compensation Act (5 U.S.C. §§8101-8150)], the question of whether the United States may be impleaded by a joint tort-feasor under circumstances where a direct claim would be barred by the foregoing authorities is unsettled. The U.S. Court of Appeals for the Ninth Circuit, in *Wien Alaska Airlines, Inc. v. United States*, 375 F.2d 736 (9th Cir. 1967), and *United Airlines v. Wiener*, 335 F.2d 379 (9th Cir. 1964), has held such claims for noncontractual tort indemnity against the United States to be barred. The Fourth Circuit, however, has adopted the contrary view, apparently permitting plaintiffs to do indirectly what they could not do directly, *Wallenius Bremen G.m.b.H. v. United States*, 409 F.2d 944 (4th Cir. 1969). A similar result may obtain when the United States voluntarily intervenes to recover medical expenses under the Medical Care Recovery Act (42 U.S.C. §§2651-53). *Nikiforow v. Rittenhouse*, 319 F. Supp. 697 (E.D. PA 1970).

g. The problem becomes more complex where the cause of action is based on product liability rather than simple tort. Product-liability cases are premised not merely on the theory of simple tort but on concepts of warranty related to the Government's participation in the design phases of manufacture of the product involved.

h. The normal procedures prescribed for reporting and investigating admiralty incidents are adequate for the purposes of handling product-liability cases. The preceding brief discussion of the new emphasis on product-liability cases is intended to bring about an awareness of this area of potential liability and the active investigation of cases which might otherwise, because they involve only civil servant personnel, go without proper investigation.

i. As previously mentioned, persons traveling in naval vessels, other than military or civil service personnel, may maintain a cause of action for injuries sustained on board. Such transportation is usually without benefit of defenses which may be contained in steamship tickets issued by commercial shipping lines. Therefore, the Navy cannot avail itself of contract defenses which may exist in favor of steamship companies in such matters. Without such clauses in the ticket, there is no requirement for immediate notice of claim. The two-year statute of limitations of the Public Vessels Act would normally apply, unless a shorter statute of limitations may be invoked under the doctrine of laches.

j. Personal-injury suits are usually very difficult to defend and recoveries may involve large sums. It is therefore imperative that the following essentials be met:

(1) Immediate medical examination and report of treatment-record results.

(2) Message report to the Judge Advocate General (Admiralty Division) (except in case of minor injury to military dependents, for which air mail will suffice).

(3) Names and addresses of all witnesses and statements if possible.

(4) Examination of the locality and apparatus involved to meet any issue of alleged negligence of the vessel (make record of results).

(5) Photographs of the locality and conditions involved.

(6) Preservation of any gear or equipment which has failed.

(7) Appropriate log entries.

1214 SALVAGE

a. This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. §7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

b. When a naval ship renders salvage assistance, the resulting claim against private interests can also be administratively settled by the Secretary of the Navy pursuant to 10 U.S.C. §7365. Such affirmative salvage claims are reported to and processed by the Assistant Supervisor of Salvage, USN, Rm. 1313, 90 Church St., New York, N.Y. 10007. (See NAVSHIPS Instruction 4740.4C of 17 February 1970.) They are referred to the Judge Advocate General (Admiralty Division) only if the Assistant Supervisor of Salvage is unsuccessful in making collection. The Government also has the inherent right to sue in order to enforce its salvage claim. *THE WESTERN HOPE – THE IMPOCO*, 287 F. 400, 1923 A.M.C. 82 (S.D.N.Y. 1922); *THE ODENWALD*, 71 F. Supp. 314, 1947 A.M.C. 666 (D.C.P.R. 1947), *aff'd*, 168 F.2d 47, 1948 A.M.C. 888 (1948).

c. Admiralty law gives the crew of a salving vessel a share of the salvage award. A civilian crew which assists in salving a naval vessel has a cause of action against the Government separate and distinct from that of the vessel owner. Uniformed naval personnel, however, are precluded by administrative policy from maintaining suit for salvage services performed as part of their official duties. In processing affirmative claims, the Supervisor of Salvage asserts claims for the Navy on a per diem basis as owner of the salving vessel, including the services of Navy crew members.

d. The *ODENWALD* case may be regarded as a special situation so far as naval personnel are concerned. In that case, the Secretary of the Navy with Presidential approval directed that suit be filed against the German vessel *ODENWALD* on behalf of the United States and the naval personnel involved. That was an unusual situation, but it did not indicate any departure from general administrative policy. The particular case was discussed in the November 1947 issue of the *JAG Journal*. Thus, while civilians who salve a naval vessel have a cause of action against the Government, naval personnel are generally precluded by governmental policy from filing suit for salvage services rendered to commercial vessels.

e. The compensation to which a salvor is entitled generally consists of two parts. First, there is reimbursement of his expenses such as cost of labor and materials expended. Secondly, there is a bonus or a reward, the size of which depends upon many factors and varies from case to case, *THE BLACKWALL*, 77 U.S. 1 (1869). The amount of the award, however, is something less than the salved value of the property.

Life is less highly rewarded than property under the American law of salvage; that is, a salvor of life is only rewarded out of the value of property salved. If no property is salved, there is no award. Subject to this limitation, salvage awards tend to be liberal so as to encourage others to risk their ships and their lives to save property from the perils of the sea. As explained below, the Navy generally does not present its claim on a bonus basis.

f. The Assistant Supervisor of Salvage, USN, normally presents Navy salvage claims on a per diem basis. This practice of charging a daily rental is a matter of administrative convenience and policy insofar as the Supervisor of Salvage is concerned. In those cases where property is salved, however, that policy does not preclude the Government from asserting its legal right to claim on a salvage-bonus basis. Regulations concerning Navy affirmative salvage claims have been published in the Federal Register and in the Code of Federal Regulations, 32 C.F.R. Part 754.

g. The presence of uninsured Government cargo in a privately owned ship assisted by Navy salvors also gives rise to problems in general average which must be considered in the handling of affirmative salvage claims. These matters also are dealt with by the Assistant Supervisor of Salvage, New York.

h. Possible claim for damage to a privately owned ship during salvage operations also needs special consideration. In some instances, shipowners have sought to offset the Navy per diem charges in whole or in part with claims for damage to their ship caused by the salving naval vessel or her personnel. In such cases, the per diem charge is withdrawn and the Navy's claim reasserted on a salvage-bonus basis. In other instances, the shipowner has paid the per diem salvage charge, and then, without prior notice, claims for damage to his ship on a tort basis. By such time, the prior settlement of the salvage claim has precluded any claim for a salvage-bonus award. To avoid this possibility, settlement of a Navy salvage claim is normally conditioned upon a release of any claim for damage to the private ship incurred during the salvage operation.

i. In any instance of damage, claimed or actual, to a private vessel during a Navy salvage operation, commanding officers and judge advocates should immediately arrange for survey and follow the necessary reporting and investigative procedures. Depending on the circumstances, such claims may fall either within the settlement authorization of 10 U.S.C. §7622 administered by the Judge Advocate General or 10 U.S.C. §7365 administered by the Supervisor of Salvage.

j. In many cases, a separate "finder's reward" may be paid for information leading to the recovery of certain types of ordnance or oceanographic equipment. Provisions for these payments may be found in NAVORDINST 8500.1 series and NAVOCEANINST 7240.2 series, respectively.

1215 TOWAGE AND PILOTAGE

a. There are situations where the Navy performs towage or pilotage for privately owned vessels, other than services rendered in conjunction with salvage operations discussed in section 1214, *supra*. While towage and pilotage services are often rendered concurrently, a vital distinction between the two should be recognized. This distinction is especially important when considering the questions of liability for damage caused by negligent towing (including tug assistance to a vessel) or negligent piloting.

b. Where towage or pilotage is performed by commercial firms, they usually attempt to exempt themselves from liability for negligent pilotage by contract. Therefore, it is recommended that, whenever feasible, Navy pilotage be performed only upon execution of the suggested contract illustrated in Appendix A-12-a.

c. These contractual exemptions from liability have, to a great extent, been successful in pilotage situations. On the other hand, the courts have consistently held as invalid those clauses attempting to contract away liability for negligence with respect to towage.

d. For many years towing companies inserted a provision in all towing contracts stipulating that towage would be solely at the risk of the towed or assisted vessel. The intent was, of course, to immunize the tug from liability for any negligence in performing the towage. This exculpatory clause was held invalid by the Supreme Court as being contrary to public policy. *Bisso v. Inland Waterways Corp.*, 349 U.S. 85, 1955 A.M.C. 899 (1955).

e. Another clause of this type of towing contract, referred to in the *Bisso* case, sought to make the master, crew, and employees of the tug, the "servants" of the tow. Naturally, this clause, if upheld, would relieve the tug of liability for negligence. The Supreme Court made short work of the "fictitious employment" clause and struck it down. *Bisso, supra*, at 94-95. For the most part, these decisions are in conformity with the general principle that one cannot contract away liability for his own negligence.

f. Exculpatory clauses in pilotage contracts, however, have been treated more generously by the courts. The courts have justified the distinction between towage and pilotage exemption clauses on the basis of the unique position occupied by pilots. "Under law and custom they have an independence wholly incompatible with the general obligations of obedience normally owed by an employee to his employer." *Bisso, supra*, at 93-94.

g. Commercial pilotage contracts contain a clause providing that the "pilot" (often the captain of one of the assisting tugs) becomes "the servant of the owners of the vessel assisted." An early decision supports this concept of a "borrowed servant," and serves to immunize the towing company from liability to the tow for damage caused to the latter by the pilot's negligence. *Sun Oil Co. v. Dalzell Towing Co.*, 287 U.S. 291, 1932 A.M.C. 149 (1932).

h. Cases involving damage to a third party as a result of negligent towage or pilotage present special problems. The contract format illustrated in Appendix A-12-a reflects the results brought about by several court decisions. *The Beatrice*, 161 F. Supp. 136, 1958 A.M.C. 1612; *aff'd*, 275 F.2d 209, 1960 A.M.C. 1408 (2d Cir. 1960).

i. Because of the varying attitude of the courts, which on one hand have upheld exculpatory language in a commercial pilotage situation, while invalidating language designed to achieve the same purpose in a towage situation, it is advisable to require the execution of an agreement containing the clauses found in Appendix A-12-a. This will assist in preventing the Navy from being held liable for negligent pilotage and/or tug services in the situation where a commercial company would be relieved of liability.

1216 DAMAGES

a. Establishing Navy affirmative damage claims often presents extreme difficulty, requiring an exacting and high standard of proof. Particularly difficult are detention claims with respect to naval vessels.

b. Among the items of claim which may result from a collision are the following:

(1) Temporary and permanent collision repairs.

(2) Drydocking.

(3) Lost and damaged equipment, stores, provisions, fuel, and ammunition.

(4) Handling fuel and ammunition.

(5) Towage and pilotage after collision.

(6) Personnel claims.

(7) Survey fees.

(8) Detention

c. The degree of proof of Navy damages is illustrated in the Commissioners' Reports in the *CHICAGO-SILVERPALM, EVANSVILLE-MARBLEHEAD* cases, *U.S. v. M/S SILVERPALM*, 1937 A.M.C. 498 (N.D. CAL. 1937); *U.S. v. SS EVANSVILLE*, 1941 A.M.C. 62 (E.D.N.Y. 1940). To meet the required burden of proof, it is necessary that the original documentary data which establish the repair costs be obtained immediately. The Naval Sea Systems Command has called to the attention of its field activities the necessity for maintaining separate and exact records of collision repair costs of naval vessels and for expediting the furnishing of such data to judge advocates who are concerned with the preparation of damage statements. Collision repair specifications should be consonant with the surveyor's findings and recommendations.

d. In each situation, the original specifications, job orders, time and material cards, drydocking report, and departure report will be required. It is also essential that the log of the naval vessel contain entries to establish specifically the times when collision repairs commenced, during which they were carried out, and when they were completed. Coordination with the repair activity is, of course, necessary in this regard, in order that there will be no time discrepancies in the various records. The local judge advocate or admiralty officer, on being advised of the start of collision repair work, should keep in touch with the repair yard to assure adherence to the prescribed procedure, and preparation of the required records. Where a departure report is prepared, it must be checked to confirm that the data are consistent with the repair period, and to make certain that there has been proper allocation of costs between collision and noncollision items, as reflected by the job orders.

e. All noncollision work must be covered by separate job orders. This procedure will eliminate the issue of the possible inclusion of noncollision work in the collision repair costs. If during the repairs additional damage is discovered which was not covered by the original survey, opposing interests should be notified and given a chance to survey the newly discovered damage.

f. Questions as to the rate of overhead, what items are properly included therein, drydocking charges, and naval shipyard repair costs as compared with commercial costs, are issues of law and matters for negotiations in settlement. These problems therefore are not discussed here in detail.

g. An almost unvarying issue is the Navy detention claim. When a commercial vessel must immediately be withdrawn from service by reason of collision, her owner recovers her loss of earnings in addition to expenses reasonably incurred during the repair period. The same rule as to loss of earnings does not apply to naval vessels, since they are not engaged in carrying passengers or cargo for profit. However, when the loss of use of a naval vessel is the proximate result of a collision, the Government is entitled to recover the operating and maintenance cost of the ship for the period during which the Navy has been deprived of her normal service. These costs include the out-of-pocket expenses incurred during the repair period, particularly the following:

(1) Pay and allowances of officers and crew.

(2) Subsistence of crew.

(3) Fuel and lube oil consumed.

(4) Supplies and stores consumed.

h. To support a detention claim, it is necessary to include in the Navy's damage settlement documentary evidence showing the exact subsistence, wages, and other expenses of the naval vessel. With respect to pay and subsistence, this is best handled in the form of affidavits from the cognizant supply and disbursing officers to the effect that the original records disclose expenditures for pay and subsistence as set forth in the affidavits. The Judge Advocate General (Admiralty Division) or the local judge advocate will advise in appropriate cases whether such affidavits are required. The length of the repair period, if not established by the vessel's log, will require independent evidence. With the basic facts as to subsistence, wages, and the repair period thus established, the extent of recovery for detention becomes a question of law. The ship's log should contain entries showing when the vessel entered and departed the repair yard and when collision repairs were started and completed.

i. It is most desirable that collision repairs to a naval vessel be made as expeditiously as practicable, where a detention claim exists against another vessel, in an effort to eliminate the issue of whether repairs by a naval activity required an unreasonable time. A short repair period may also avoid the skeleton crew doctrine, which has been asserted against the Navy in some of the older litigated cases. Under this doctrine where an extended repair period was involved, the Navy was allowed to recover only the pay, allowances and subsistence for a skeleton crew, rather than the full complement of officers and men.

j. Where a vessel would have been out of service in any event, for example, by reason of annual overhaul or prospective inactivation, detention is not legally recoverable. To avoid the labor of preparation of detention data in cases where detention is not recoverable, the local judge advocate and the Judge Advocate General (Admiralty Division) should be advised as soon as possible of plans for repair of the naval vessel. Appropriate instructions will then be issued as to the extent of the data required in support of the Navy's claim.

k. Naval vessels (particularly MSC vessels) are frequently repaired in commercial yards rather than naval shipyards. In such cases, the collision repair specifications should be written up on the basis of the surveyors' findings and recommendations. Invitations to bid are then normally issued to commercial shipyards, and the contract is awarded on the basis of the low bid. This procedure simplifies proof of the collision repair costs, which can be established by the shipyard's bill or invoice. As in the case of repairs by a naval shipyard, it is most important that any noncollision work be covered by separate specifications, job orders, bids and invoices.

l. Extreme difficulties arise in the preparation of damage statements if these matters are deferred until the issue becomes relevant in future negotiations or litigation. For that reason, damage statements are prepared immediately after the necessary cost data are available upon the completion of collision repairs. As in the case of the original documentary data with respect to navigation, the original documents to support the damage claim must be carefully preserved.

1217 SUMMARY

a. In Collision Cases:

(1) Report the collision by message to JAG and concerned commands as required.

(2) Preserve the original logs, navigational, radar, and other ship's records bearing on the collision.

(3) Do not erase any log or other entry. If correction is needed, line through original entry, write-in and initial the substituted entry.

(4) Compare and note any discrepancies between the bridge and engineroom clocks. Log the faults of the other vessel.

(5) If no investigation is ordered, take detailed statements of witnesses, including name, rate, social security number, license or certificate (Z) number, marine experience, and permanent home address.

(6) Instruct all hands not to discuss the circumstances of the collision with anyone except appropriate Navy representatives.

(7) Arrange through the local judge advocate for surveys of the damage of your ship and the other ship.

(8) Obtain photographs of the damage, showing the angle of collision and other details.

(9) Where the other vessel was wholly or partially at fault, take steps to support the Navy's damage claim.

b. In Personal Injury Cases:

(1) Report as required.

(2) Record circumstances in log and preserve entries.

(3) Afford injured person opportunity for physical examination (including X-rays) and emergency medical treatment. If availed of, log and report results; if refused, note accordingly.

(4) Take detailed statements of witnesses with identification as suggested above.

(5) If gear or equipment gave way, preserve same if practical.

(6) Take photographs of the place or apparatus involved.

Chapter XIII

DELIVERY OF PERSONNEL-SERVICE OF PROCESS AND SUBPOENAS-PRODUCTION OF OFFICIAL RECORDS

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PART A–DELIVERY OF PERSONNEL

1301 DELIVERY WHEN PERSONNEL WITHIN TERRITORIAL LIMITS OF THE REQUESTING STATE

In cases in which the delivery of any person in the Navy or Marine Corps is requested by local civil authorities of a State, Territory, or Commonwealth for an alleged offense punishable under the laws of that jurisdiction, and such person is attached to a Navy or Marine Corps activity within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is presented, subject to exceptions in section 1308. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected if reasonably practicable.

1302 DELIVERY WHEN PERSONNEL BEYOND TERRITORIAL LIMITS OF REQUESTING STATE

a. *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, upon compliance with the provisions of this section and §§1305, 1306, and 1309 and subject to the exceptions in section 1308, to deliver such person for the purpose of making him amenable to prosecution. The serviceman may be delivered upon formal or informal waiver of extradition in accordance with subsection b, or upon presentation of a fugitive warrant, in which case the procedures of subsection c apply.

b. *Waiver of extradition*

(1) Any person may waive formal extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. The form for waiver should be substantially as that suggested in Appendix A-13-a.,

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in subsection c below.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

(4) When an individual declines to waive extradition, the nearest naval legal service office or Marine Corps staff judge advocate shall be informed and shall make further representations to the civil authorities as appropriate. The individual concerned shall not be transferred or ordered out of the State in which he is then located, without the permission of the Secretary of the Navy (Judge Advocate General), until the matter of extradition is resolved.

c. *Fugitive warrants*

(1) A fugitive warrant, as used in this chapter, is a warrant for the arrest of an individual issued by a State court of competent jurisdiction. Normally, a State requesting delivery of a serviceman from another State will issue a fugitive warrant to the State where the serviceman is then located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the serviceman is located, the latter State will normally request delivery of the serviceman to local State authorities. Delivery to local State officials should be arranged by Navy or Marine Corps officers designated in subsection a of this section and subject to the conditions of section 1308 and paragraphs (3) and (4) of this subsection.

(3) Upon receipt of such a request for delivery of a serviceman under fugitive warrant to such State authorities, if such serviceman voluntarily waives extradition, the provisions of subsection b, above, apply. If waiver is refused, the serviceman, after delivery to local State authorities, will then have the opportunity to contest extradition in the courts of the State in which he is located. Where waiver is refused, the nearest naval legal service office or Marine Corps staff judge advocate is responsible for effecting liaison with officials of both the requesting State and State in which the serviceman is located. The provisions of paragraph (4) of subsection b above regarding transfer of the serviceman apply while State authorities are actively proceeding to effect extradition.

(4) No delivery of a serviceman by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by section 1305 and execution of such agreement by officials of both the requesting State and the State in which the serviceman is located or execution of such agreement by officials of the State in which the man is located where such officials accept on behalf of such State the full responsibility for returning the individual to the designated military command.

d. *Personnel stationed outside of the United States.* When the serviceman sought by State authorities is not located within a State, Territory, or Commonwealth of the United States, see section 1303.

1303 PERSONNEL STATIONED OUTSIDE THE UNITED STATES

a. *Personnel desired by local authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will direct the Commandant of the Marine Corps or Chief of Naval Personnel, as the case may be, to issue appropriate orders to the individual concerned directing his transfer to the United States to the military installation most convenient to the Department of the Navy. The individual will be held under the minimum restraint required under the circumstances. The Commandant of the Marine Corps or the Chief of Naval Personnel, as the case may be, will inform the officials of the requesting State of the location of the individual concerned and that custody may be obtained by compliance with section 1301, or 1302, as applicable.

b. *Personnel desired by Federal authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial in Federal District Court, upon appropriate representations by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the individual will be returned to the United States and held at a military facility convenient to the Department of the Navy. Delivery may be accomplished as set forth in section 1306.

1304 JAG AUTHORITY

The Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under sections 1301, 1302, 1303, 1305, 1314, 1315, 1320, 1323, and 1330.

1305 AGREEMENT REQUIRED PRIOR TO DELIVERY TO STATE AUTHORITIES

a. *Delivery under Article 14, UCMJ.* In every case in which the delivery of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in Appendix A-13-b. When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which he is attached) which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation (under escort in case of delivery in accordance with section 1315) back to a naval or Marine Corps activity as set forth herein, cash necessary to cover his incidential expenses en route thereto, and the Department of the Navy so informed. Any departure from the agreement set forth in Appendix A-13-b must have prior approval from the Secretary of the Navy (Judge Advocate General).

b. *Delivery under Interstate Agreement on Detainers Act.* Special forms, not contained in this Manual, are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to Article 14, UCMJ. See section 1315 for a detailed discussion of the Act.

1306 DELIVERY OF PERSONNEL TO FEDERAL AUTHORITIES

a. *Authority to deliver.* Commanding officers are authorized to and should deliver personnel to Federal law enforcement authorities who display proper credentials and represent to the command that a federal warrant for the arrest of the individual concerned has been issued, subject to exceptions in section 1308. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected if reasonably practicable.

b. *Agreement not required of Federal authorities.* The agreement described in section 1305 will not be exacted as a condition to the delivery of personnel to Federal law enforcement authorities. In the event that the person delivered is acquitted, or, if convicted, immediately upon satisfying any sentence of the court, or upon other disposition of his case, the person will be returned to the naval service (provided that naval authorities desire his return) and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

1307 DELIVERY OF PERSONNEL TO FOREIGN AUTHORITIES

Except when provided by agreement between the United States and the foreign government concerned, commanding officers are not authorized to deliver persons in the Department of the Navy to foreign authorities. When a request for delivery of personnel is received in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General.

1308 CIRCUMSTANCES IN WHICH DELIVERY IS REFUSED

a. *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending, commanding officers should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery of personnel to Federal, State, Territory, Commonwealth, or local authorities if reasonably practicable.

b. *When delivery may be refused.* Delivery may be refused only in the following limited circumstances:

(1) Where the accused has been retained for prosecution as set forth in section 0107g(3)(a);

(2) When the commanding officer considers that extraordinary circumstances exist which indicate that delivery should be denied.

c. *Delivery under Detainers Act.* Where the accused is undergoing a sentence of a court-martial, see section 1315.

d. *Reports required.* When refusal of delivery is intended see section 1310.

1309 RESERVED

1310 REPORT REQUIRED WHEN DELIVERY REFUSED

In any case where it is intended that delivery will be refused, the commanding officer shall report the circumstances to the Judge Advocate General by message (or by telephone if circumstances warrant). The initial report shall be confirmed by letter setting forth a full statement of the facts. RCS JAG 5821-4 (Appendix A-13-c). A copy of the report shall be forwarded to the area coordinator.

*1311 RESERVED

1312 PERSONNEL RELEASED BY CIVIL AUTHORITIES ON BAIL OR ON THEIR OWN RECOGNIZANCE

A person in the Navy or Marine Corps arrested by Federal, State or Territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or Territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or leave to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

1313 INTERVIEWING OF NAVAL PERSONNEL BY FEDERAL CIVILIAN INVESTIGATIVE AGENCIES

Requests by the Federal Bureau of Investigation or other Federal civilian investigative agencies to interrogate persons in the naval service suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to the Judge Advocate General.

1314 HABEAS CORPUS

a. *General.* In all cases where habeas corpus process is served on a person in the Navy or Marine Corps, the nearest U.S. Attorney will be informed immediately and his assistance requested. A report of such service will be made to the Secretary of the Navy (Judge Advocate General) by message (telephone if circumstances warrant) confirming the initial report by a speed letter to the Secretary of the Navy (Judge Advocate General). This letter should include the information outlined in subsection b. below. Action must be taken expeditiously in habeas corpus proceedings as the courts generally allow only a short period of time in which to prepare a response.

b. *Reports required*

(1) Immediately following the message or telephonic report to the Secretary of the Navy (Judge Advocate General) a copy of the petition for the writ of habeas corpus, and all other pleadings, orders, and process in the case, will be forwarded to the Secretary of the Navy (Judge Advocate General) by letter. The letter should also include a full statement as to the circumstances under which the petitioner has been detained. RCS JAG 5821-6.

(2) When the hearing has been completed and the court has issued its order in the case, a copy of the order shall be forwarded promptly to the Secretary of the Navy (Judge Advocate General). This is particularly important if the order was adverse to the Navy in order to permit a timely determination as to whether or not to undertake further proceedings.

1315 REQUEST FOR DELIVERY OF PERSONNEL SERVING SENTENCE OF COURT-MARTIAL

a. *General.* Authority to honor requests for delivery of military personnel serving a sentence of court-martial is provided by Article 14, UCMJ (10 U.S.C. § 814). Although seldom utilized, additional authority and mandatory obligation to deliver such personnel is provided by the Interstate Agreement on Detainers Act, Pub. L. No. 91-538 §§ 1-8, Dec. 9, 1970, 84 Stat. 1397-1403, (18 U.S.C. Appendix, hereinafter "the Act") which applies to the federal agency that is holding the prisoner and has been adopted by approximately four-fifths of the state jurisdictions. The Department of the Navy as an agency of the federal government shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for the prisoners to be tried on charges pending before state courts, either at the prisoner's request, or at the request of the state where the charges are pending. When delivery is refused, comply with section 1310.

b. *Interstate Agreement on Detainers Act.* Upon request under the Act by either the prisoner himself or state authorities, the cognizant Navy or Marine Corps staff judge advocate, as appropriate, shall effect liaison with the appropriate state officials and shall monitor and ensure that action is taken by the cognizant commander on all such requests. While requests between federal authorities do not appear to be specifically covered by the Act, prisoner requests for disposition of federal charges shall generally be handled in accordance with the procedures outlined herein except that no delivery agreement is required by federal authorities (see section 1306). In the case of requests by state authorities under the Act, liaison shall be established with the Director, Bureau of Prisons, Washington, D.C. 20537, who has sole authority to deny the request. The Act provides that the court-martial sentence shall continue to run during temporary custody.

(1) *State Request.* State officials may demand delivery of prisoners in military custody under § 2, Article IV, of the Act if (1) a detainer has been lodged against the prisoner; and (2) the prisoner is serving a sentence (regardless of whether an appeal is in process). Delivery of such prisoner upon state

request is mandatory as to Navy/Marine Corps authorities and may be refused only if the request is disapproved by the Director of the Bureau of Prisons, Washington, D.C. as the designee of the Attorney General for this purpose. 28 C.F.R. § 0.96(a). There has been no further delegation to military authority. The consent of the prisoner is not required and the Director of the Bureau of Prisons is the only authority who can provide relief to the prisoner.

(2) *Prisoner Request.* The obligation to grant temporary custody under the Act applies with equal force to requests to be delivered to state authority made by the prisoner. § 2, Article III (c), of the Act requires the prisoner's custodial official to inform him of the existence of any detainer and of his right to request disposition. The prisoner's request is directed to the custodial official who is required to forward it to the appropriate prosecuting official and court together with a certificate of prisoner status, all as provided by Article III of the Act.

(3) *Delivery.*

(a) *Requests under Detainers Act.* When a request for delivery is received from civil authorities pursuant to § 2, Article IV of the Act, the prisoner should be informed that he may request the Director of the Bureau of Prisons, Washington, D.C. 20537, to deny the request, within 30 days after such request is received. Upon the expiration of such 30-day period or upon denial of the prisoner's request by the Director of the Bureau of Prisons, whichever occurs first, the prisoner shall be delivered to the requesting authority as soon as practicable.

c. *Article 14, UCMJ.* When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody shall be governed by Article 14, UCMJ and sections 1301 *et seq. JAG Manual.* The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, *e.g.*, situations where additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights. The agreement discussed in section 1305 will be required as a condition precedent to delivery. Unlike delivery under the Act, delivery of custody persuant to Article 14 operates to interrupt the execution of the court-martial sentence.

d. *Forms.* The form in Appendix A-13-c with appropriate modifications should be utilized in reporting refusal of delivery of prisoners.

1316 REQUEST FOR DELIVERY OF PERSONNEL SERVING SENTENCE OF A STATE COURT

a. *General.* Ordinarily, personnel serving protracted sentences resulting from a State criminal conviction will be processed for administrative discharge by reason of misconduct. (*See* article 3420185(1)(e) BUPERSMAN and paragraph 6017.3c, MARCORSEPMAN.) On occasion, however, it may be in the best interest of the naval service to retain a servicemember, charged with a serious offense subject to military jurisdiction, in order to try the member by court-martial. The vehicle available for obtaining temporary custody of incarcerated personnel for the purpose of prosecution is a request to the State under the Interstate Agreement on Detainers Act. [18 U.S.C. Appendix (1976)].

b. *Interstate Agreement on Detainers Act.* Military authorities may avail themselves of the Act to obtain temporary custody of a servicemember incarcerated in a State institution, pursuant to conviction by a State court, in order to resolve criminal charges against the member that are cognizable before a court-martial.

(1) *Detainer.* If a command chooses to follow this course of action, the commanding officer of the cognizant Naval Legal Service Office, shall file a detainer with the warden, commissioner of corrections, or other State official having custody of the member. The detainer shall identify the member with particularity, enumerate the military charges pending against him/her, and request the Command be notified in advance of any intention to release the member from confinement.

(2) *Request for Delivery.* As soon as practicable after filing the detainer, the commanding officer of the cognizant Naval Legal Service Legal Office shall prepare a written request for temporary custody of the incarcerated servicemember addressed to the State official charged with administration of the State penal system. The request shall designate the person(s) to whom the member is to be delivered and shall be transmitted via the military judge to whom the service member's case has been assigned. If the request is properly prepared, the military judge shall approve, record, and transmit the request to the addressee official. The Act provides for a 30-day period after receipt of the request before the request is honored. Within that period of time the Governor of the State may disapprove the request, either on his own motion or upon the prisoner's request. If the Governor should disapprove the

request, the command should coordinate any further action with the Office of the Judge Advocate General (Litigation Division).

(3) *Responsibilities.* The cognizant command shall ensure that the responsibilities of a receiving jurisdiction, delineated in section 2, Article IV, of the Act, are discharged. In particular, the Act requires that the receiving state:

(a) commence the prisoner's trial within 120 days of the prisoner's arrival, unless the court, for good cause shown during an Article 39(a) session, grants a continuance that is necessary or reasonable to promote the ends of justice;

(b) hold the prisoner in a suitable jail or other facility regularly used for persons awaiting prosecution, except for periods during which the prisoner attends court or travels to or from any place at which his presence may be required;

(c) return the prisoner to the State at the earliest practicable time, but not before the charges that underlie the request have been resolved (prematurely returning the prisoner will result in the dismissal of the charges); and

(d) Pay all costs of transporting, caring for, keeping, and returning the prisoner to the State, unless the command and the State should otherwise agree on some other allocation of the costs or responsibilities.

1317-1319 RESERVED

PART B–SERVICE OF PROCESS AND SUBPOENAS UPON PERSONNEL OF THE NAVAL ESTABLISHMENT

1320 SERVICE OF PROCESS UPON PERSONNEL

a. *Within the jurisdiction.* Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, Territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, such service should not be allowed within the confines of the command until the permission of the commanding officer has first been obtained. Personnel serving aboard vessels located within the territorial waters of the State or Territory out of which the process issues are considered within the jurisdiction of that State or Territory for the purpose of service of process. The commanding officer shall permit the service of process except in unusual cases where he concludes that compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, the commanding officer shall require that the process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases commanding officers will ensure that the nature of the process is explained to the person concerned.

b. *Personnel beyond the jurisdiction of the court*

(1) Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in subparagraph a. above for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. In most cases he should further advise the person concerned to consult legal counsel.

(2) Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. In such cases the commanding officer will ensure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that the person named therein refused to accept it.

c. *Service of process arising from official duties*

(1) If the service of process involves a potential claim against the Government, *see* sections 2021a-b and 2032. While the right to remove to Federal Court under 28 U.S.C. 1442 and 1442a requires color of office, which is considered to be more than simple scope of employment, this right must be fully explored in all situations where the outcome of the State court action may influence a claim or potential claim against the United States.

(2) Any military member or civilian employee who is served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of official duties shall immediately deliver all such process and pleadings to the commanding officer. The commanding officer shall ascertain the pertinent facts, notify the Judge Advocate General (Code 14), preferably by telephone, of the service, and immediately forward to that Office the pleadings and process in the case. The military member or civilian employee will be advised concerning his/her right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. §1442 and §1442a, his/her rights under the Federal Driver's Act (28 U.S.C. §2679B), (if applicable), and the right of a Federal employee to be represented by Department of Justice attorneys in State criminal proceedings and in civil and Congressional proceedings in which that

employee is sued or subpoenaed in an individual capacity, as delineated in 28 CFR §50.15 (1979). Any letter requesting representation shall be addressed to the Secretary of the Navy (Judge Advocate General), and shall be endorsed by the commanding officer, who shall provide all necessary data bearing upon the question as to whether the employee was acting within the scope of employment at the time of the incident out of which the suit arose.

(3) Whenever a military member or civilian employee of the Department of the Navy is served with any process because of his official position, the Judge Advocate General shall be notified by message or telephone. This notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action. RCS JAG 5821-7. For lawsuits filed in the United States District Court, Washington, D.C., the Air Force has been assigned responsibility for accepting service of process for the Navy. See section 1314 for habeas corpus and section 1340 for litigation reports. In habeas corpus cases, liaison with the U.S. Attorney assigned to protect the Navy's interests will be maintained through the Judge Advocate General after the initial notification prescribed by section 1314.

d. *Service of process of foreign courts*

(1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846.) Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General. Service of process when the United States Government or one of its agencies or instrumentalities is the named defendant may involve a situation where the doctrine of sovereign immunity will allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the United States, on the other hand, must always be processed in accordance with the applicable international agreement or treaty, whether or not the suit involves acts performed in the course of official duties. When the report required by section 1325 is made, the Judge Advocate General will make arrangements through the Department of Justice for defense of a suit against the United States or an official acting within the scope of his official duties, or other appropriate arrangements, and will issue appropriate instructions.

(2) Usually, persons in the Department of the Navy are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with subsection c above. In exceptional cases where the United States has agreed that service of process will be accepted by persons in the Department of the Navy located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of subsection a, above, will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands him or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a member of his command, a commanding officer shall notify the serviceman of the fact that a particular foreign court is attempting to serve process upon him and inform him that he may ignore the process or come to the office and receive it. If the serviceman chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that he chose to ignore it, and that no physical offer of service had been made. The commanding officer will keep the Judge Advocate General advised of all requests for service of process from a foreign court and the details thereof.

e. *Leave or liberty to be granted persons served with process.* In those cases where personnel either are served with process, or voluntarily accept service of process, the commanding officer normally will grant leave or liberty to the person served in order to permit him/her to comply with the process, provided such absence will not prejudice the best interests of the naval service. In cases where a member is being called as a witness for a nongovernmental party only because of performance of official duties, the commanding officer is authorized to issue the member permissive orders authorizing attendance at the trial at no expense to the Government. Members are permitted to accept fees and mileage tendered.

f. *Report where service is not allowed.* Where service of process is not permitted, a report of such refusal and the reasons therefor shall be forwarded by speed letter (telephone if conditions warrant) to the Secretary of the Navy (Judge Advocate General). RCS JAG 5821-8.

1321 PERSONNEL SUBPOENAED AS WITNESSES IN STATE OR LOCAL COURTS

Where military personnel or civilian employees are subpoenaed to appear as witnesses in State or local courts, and are served in the manner described under conditions set forth in section 1320, the provisions of section 1320e apply. If naval personnel are requested to appear as witnesses in State or local courts where the interests of the Federal Government are involved (*e.g.*, Medical Care Recovery Act cases) the procedures described in section 1322a may be followed.

1322 PERSONNEL SUBPOENAED AS WITNESSES IN FEDERAL COURTS

a. *Witnesses on behalf of Federal Government.* Where naval personnel or civilian employees of the Department of the Navy are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in a case involving activities of the Department of the Navy, the Chief of Naval Personnel, the Commandant of the Marine Corps, or the Judge Advocate General with respect to civilian employees, as the case may be, will direct the activity to which the person is attached to issue temporary additional duty travel orders to the person concerned. The charges for such orders shall be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Travel Regulations and U.S. Navy Travel Instructions. If the required witness is to appear in a case where the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046278.

b. *Witnesses on behalf of nongovernmental parties*

(1) *Criminal actions.* Where naval personnel are served with a subpoena to appear as a witness for the defendant in a criminal action and the fees and mileage required by Rule 17(d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer is authorized to issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the public interest would be seriously prejudiced by his absence. In this case a full report of the circumstances will be made to the Judge Advocate General. In those cases where fees and mileage are not tendered as required by Rule 17(d) of the Federal Rules of Criminal Procedure, but the person subponaed still desires to attend, the commanding officer is authorized to issue permissive orders at no cost to the Government. However, such persons should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) *Civil actions.* Where naval personnel are served with a subpoena to appear as a witness on the behalf of a non-governmental party in a civil action brought in a Federal court, the provisions of section 1320 apply.

1323 NAVAL PRISONERS AS WITNESSES OR PARTIES IN CIVIL COURTS

a. *Criminal actions.* In those instances where the Federal, State, or Territorial authorities desire the attendance of a naval prisoner as a witness in a criminal case, a request for such person's attendance should be submitted to the Secretary of the Navy (Judge Advocate General). Upon receipt of such a request, authority will be given, in a proper case, for the production of the requested naval prisoner in court without resort being had to a writ of *habeas corpus ad testificandum* (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

b. *Civil actions.* The Department of the Navy will not authorize the attendance of a naval prisoner in a

Federal, State, or Territorial court, either as a party or as a witness, in private litigation pending before such court, because in these the court may grant a postponement or a continuance of the trail. The deposition of a naval prisoner may be taken in such a case subject to such reasonable conditions or limitations as may be imposed by the command concerned.

1324 INTERVIEWING PERSONNEL PRELIMINARY TO CIVIL LITIGATION IN MATTERS PERTAINING TO OFFICIAL DUTIES

a. *Request by parties in interest.* Except as hereinafter limited, requests, preliminary to civil litigation, for permission to conduct an *ex parte* interview of persons in the Department of the Navy (enlisted, commissioned, or civilian) in matters growing out of their official duties, and requests regarding the obtaining of their statements shall be forwarded to the officer in charge of the cognizant naval legal service office or Marine Corps staff judge advocate, who, when practicable, will make appropriate arrangements. Interviews of such personnel shall be conducted in the presence of an officer designated by the officer in charge, naval legal service office or Marine Corps staff judge advocate. If any of the parties in interest desire statements from the interviewed personnel, such statements shall be prepared under the direction of the designated officer. A signed copy of the statement shall be furnished (at no cost to the government) to the person making the statement, and to the officer in charge, naval legal service office or Marine Corps staff judge advocate and to the Judge Advocate General. If the interview involves any line of inquiry which would disclose privileged matters or compromise classified material or otherwise be detrimental to the security interests of the United States, the assigned officer shall immediately preclude that line of inquiry.

b. *Limitations.* Requests mentioned in subsection a. above shall not be granted where the United States is a party in any related litigation or where its interests are involved, including cases where the interests of the United States or any Department thereof are represented by private counsel by reason of insurance or subrogation arrangements. In these instances, records, data, and witnesses shall be made available only to the Department of Justice or to such other U.S. Government departments, agencies or personnel requiring access thereto in the performance of their official duties.

c. *Admiralty matters.* Inquiries which relate to admiralty matters or to maritime litigation, whether involving naval vessels or not, shall be sent to the Office of the Judge Advocate General (Deputy Assistant Judge Advocate General (Admiralty)). Examples of admiralty matters are set forth in chapter 12.

1325 SUITS AGAINST THE UNITED STATES

a. *General.* The primary responsibility for representing the United States in any litigation in which the United States has an interest rests in the Attorney General. For the purpose of affording the Attorney General timely notice of legal actions arising out of operations of the Naval Establishment, the Judge Advocate General and the General Counsel, within the areas of their respective jurisdictions, maintain close liaison with the Department of Justice. Reports are required of all suits against the United States, or its prime contractors or subcontractors on contracts under which the Government may be obligated to make reimbursement or in cases where the United States is, in legal effect, the defendant.

b. *Reports to the Judge Advocate General.* When any command is apprised, by service of process or otherwise, of the commencement of any civil litigation or legal proceedings, including those involving nonappropriated-fund activities, other than suits within the jurisdiction of the General Counsel as set forth in subsection c below, which arise out of the operations of the Naval Establishment or are otherwise of substantial interest to it, such command will report to the Judge Advocate General, Navy Department, Washington, D. C., by the most expeditious means, using message, telephone, or letter, as may be warranted by the circumstances. RCS JAG 5821-9. This category of civil litigation and other legal proceedings includes, but is not limited to, any legal proceeding involving the United States as a party and arising out of operations of the Department of the Navy; proceedings against any person subject to military law or any official or employee of the Department of the Navy in connection with his public duties; and proceedings in which attachment of Government funds or other property is sought. The report shall contain as much of the following information as may be pertinent:

(1) Name of parties to the proceeding.

(2) Nature of the action.

(3) Correct designation of the tribunal in which the proceeding is brought.

(4) Docket number of case, if available.

(5) Names of person or persons on whom service was made, method of service, and dates.

(6) Explanation of Government's interest in the proceeding.

(7) Date by which the defendant must plead or otherwise respond.

(8) Nature of the principal defense, if known.

(9) Status of the defendant as being a Government officer, employee, agent, contractor, nonappropriated-fund activity employee, etc.

(10) Amount claimed, or other relief sought.

(11) If a contractor is involved, the contract number, and information as to whether the contractor desires or is willing to permit the suit to be defended by a United States Attorney.

(12) Data as to whether the subject matter of the suit is covered by insurance; if so, whether covered to the amount claimed, and whether the insurance carrier will accept full responsibility for defense of the suit.

(13) If action is brought in a foreign country, a recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interests of the United States. Normally, the names of such attorneys should be from a list maintained by the U.S. Embassy or Consulate.

(14) Such other available information as may be necessary for a full understanding of the action and to enable the Government to prepare a defense.

c. *Reports to the General Counsel.* RCS JAG 5821-10. A report as required above shall be made to the General Counsel, Navy Department, Washington, D.C., rather than to the Judge Advocate General, in all cases relating to:

(1) Business and Commercial law
(2) Patent legal matters
(3) Civilian personnel law
(4) Contract claims and litigation

(For a more detailed explanation of areas of responsibility, see SECNAVINST 5430.25 series.)

d. *Cases Involving Civilian Personnel Matters.* The Central Office of the General Counsel includes the Office of Civilian Personnel Law. Commands, activities, and officers in charge of naval legal service offices will cooperate with attorneys of the Office of the General Counsel and render such assistance as is requested in all matters pertaining to civilian personnel litigation.

e. *Initial and Supplemental Reports.* If all pertinent information is not readily available, a prompt report should be made with such information as is available, supplemented by an additional report as soon as possible.

PART C–PRODUCTION OF OFFICIAL RECORDS

1330 PRODUCTION OF OFFICIAL RECORDS IN RESPONSE TO COURT ORDER

a. *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, D.C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. See the provisions in SECNAVINST 5211.5 series which set forth the additional requirement that reasonable efforts be made to notify all individuals to whom the record pertains of (1) the disclosure, and (2) the nature of the information provided, when the court order has become a matter of public record and the record is contained in a "system of records" as defined in SECNAVINST 5211.5 series. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without a court order when such records are not in a "system of records" as defined by the Privacy Act [5 U.S.C. §552a, (1976)] except as noted in subsections b and c below. In determining whether or not a record not contained in a "system of records" will be furnished in response to a written request for that record, consideration shall be given to the provisions of SECNAVINST 5720.42 series. If the record is in a "system of records", it may be produced upon written request of one or more parties in interest or their respective attorneys in the absence of a court order only if the individuals to whom the record pertains give written consent to the production or if the production is otherwise authorized under the Privacy Act and SECNAVINST 5211.5 series. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified. Any release of classified information for civil court proceedings (whether civil or criminal in nature) must also be coordinated within the office of the Chief of Naval Operations (OP-009D) in accordance with OPNAVINST 5510.1 series.

b. *Records in the custody of National Personnel Records Center*. Court orders, or documents in the nature of *subpoenas duces tecum* if they have the legal effect of court orders, demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard, St. Louis, Missouri 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General):

(1) When the United States (Department of the Navy) is one of the litigants;

(2) When the case involves a person or persons who are or have been senior officers or officials within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

c. *Exceptions*. Where not in conflict with the foregoing restrictions relative to personal information, the release of which would result in a clearly unwarranted invasion of personal privacy, the production in Federal, State, Territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility in the area. Where travel is involved, it must be without expense to the Government.

d. *Medical and other records of civilian employees*. Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 F.R. 5963, as implemented by Federal Personnel Manual, chapter 294, and chapter 339.1-4. Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or For-Official-Use-Only information, such as loyalty or security records. The disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor shall be governed by SECNAVINST 5211.5 series and SECNAVINST 5720.42 series, as appropriate. Where information is furnished hereunder in response to a

court order, it is advisable that certified copies rather than originals be furnished and that, where original records are to be produced, the assistance of the United States Attorney or United States Marshal be requested so that custody of the records may be maintained.

e. *Accounting for disclosures from "systems of records."* When compliance with a court order for production of records is deemed appropriate or when the release of records is otherwise authorized in subsection a, above, and the records released are contained in a "system of records," the official responsible for releasing the records shall consult SECNAVINST 5211.5 series regarding the requirement that accountings of the disclosures be maintained. Appendix A-3-a is recommended for this purpose.

1331 PRODUCTION OF OFFICIAL RECORDS IN THE ABSENCE OF COURT ORDER

a. *General.* Release of official records outside the Department of the Navy in the absence of court order is governed by the Privacy Act (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. § 552). The following sources pertain: SECNAVINST 5211.5 series (Privacy) and SECNAVINST 5720.42 series (Freedom of Information).

b. *Release of JAG Manual Investigations, Court-Martial Records, Articles 69 and 73 Petitions, and Article 138 Complaints of Wrongs.* Except as provided in this section, only the Assistant Judge Advocates General (Civil Law) and (Military Law) shall make determinations concerning the release of records herein covered if less than a release of the complete requested record will result. In all other instances the Deputy Assistant Judge Advocates General, who have cognizance of the record(s) in issue, may release such records. Local record holders are reminded that the authority to release records does not necessarily include denial authority.

(1) *JAG Manual Investigations (including enclosures).* Any request for release outside of the Department of the Navy shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination.

(2) *Court martial records and Articles 69 and 73 petitions.* These are matters of public record and may be released by any local holder. Court martial records should be released only following proper authentication.

(3) *Article 138 Complaints of Wrongs.* Forward as in b.1 above.

c. *Affirmative Claims Files.* Affirmative claims files (including Medical Care Recovery Act files), except to the extent that such files contain copies of reports of investigations prepared under this Manual, or classified or privileged information, may be released by local holders to insurance companies to support claims; to civilian attorneys representing the injured party's and the government's interests; and to other components of the Department of Defense, without the prior approval of the Judge Advocate General, provided that the amount of the claim is within the monetary settlement authority of the releaser. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility for the area.

d. *Accounting for disclosures of records from system of records.* When records located in a "system of records" are released, the official responsible for releasing the records shall consult SECNAVINST 5211.5 series regarding the requirement that accountings of the disclosures be maintained. Appendix A-3-a is recommended for this purpose.

1332 CERTIFICATES OF FULL FAITH AND CREDIT

The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General is authorized to execute certificates of full faith and credit certifying the signatures and authority of officers of the Department of the Navy.

PART D—LIAISON WITH THE DEPARTMENT OF JUSTICE

1340 LITIGATION REPORTS

In all lawsuits involving the Department of the Navy, other than those under the cognizance of the General Counsel, the litigation report to the Department of Justice will be prepared in the Office of the Judge Advocate General unless authority to prepare the report is specifically delegated to a field activity. RCS JAG 5821-11

1341 LIAISON WITH U. S. ATTORNEY

In matters other than those which are under the cognizance of the General Counsel, liaison with local U.S. Attorneys will be maintained through the Judge Advocate General, except for the initial report required by section 1314 in habeas corpus cases, unless specific authority has been delegated to a field activity.

PART E–MINOR OFFENSES COMMITTED ON NAVY AND MARINE CORPS INSTALLATIONS

1350 GENERAL

The Federal Magistrates Act, 18 U.S.C. §§ 3401-3402, provides, *inter alia*, for trial by Federal Magistrates of individuals who commit minor offenses within Federal reservations. Policies and procedures for implementation of the Federal Magistrates Act and the handling of minor offenses committed aboard Navy and Marine Corps installations are set forth in SECNAVINST 5822.1 series.

1351 PROSECUTION BEFORE FEDERAL MAGISTRATES

a. *Responsibility of the Department of Justice.* The Department of Justice is primarily responsible for the prosecution of offenses before Federal Magistrates. Prosecution before Federal Magistrates of minor offenses committed on Navy and Marine Corps installations which are situated within the judicial district of a United States District Court, however, may be conducted by qualified Navy and Marine Corps officers when no representative of the Department of Justice is available provided the approval of the appropriate United States Attorney is obtained.

b. *Designation of Navy and Marine Corps officers to conduct prosecutions.* If the United States Attorney advises that no representative of the Department of Justice is available to conduct prosecutions of minor offenses, the commanding officer of the installation may designate one or more Navy or Marine Corps judge advocates of his command, or make necessary arrangements for the designation of one or more Navy or Marine Corps judge advocates stationed in the area, to conduct such prosecutions.

PART F–APPEARANCES BY JUDGE ADVOCATES IN CIVIL COURT AND/OR CIVIL ADMINISTRATIVE PROCEEDINGS

1360 ON BEHALF OF SERVICE MEMBERS

a. No Navy or Marine Corps judge advocate may appear as counsel on behalf of any member of the armed services before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, including a collateral attack upon military justice, court-martial, administrative elimination or investigatory proceeding, unless specifically authorized by the Judge Advocate General or Director, Naval Legal Service, as appropriate. The Expanded Legal Assistance Program, which involves in-court appearances by Navy and Marine Corps judge advocates, has been specifically authorized in section 1906 of this manual.

b. Requests by Navy or Marine Corps judge advocates to appear as counsel before any court, tribunal, body, or agency outlined above will be delivered to the commanding officer or officer in charge of the judge advocate, as appropriate. The request for permission must contain information as to the identity of the member to be represented; a statement of reasons for requesting permission to appear; identity of the court, tribunal, etc., where appearance is desired; nature of action intended to be filed; the nature of relief to be requested; reasons why civilian counsel may not be retained; estimated time required for representation (including preparation, travel and appearance); and any other action previously filed or pending on the same subject matter. The commanding officer or officer in charge will then cause the request to be forwarded to the Judge Advocate General (Code 20), Department of the Navy, Washington, DC 20370, together with comments and recommendations concerning the request. If the request is for a Marine Corps judge advocate, the request, together with comments and recommendations, shall be submitted to the Judge Advocate General (Code 20) via the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20370. Comments and recommendations concerning the request will include, but need not be limited to, the nature and status of any pending military justice, court-martial, administrative elimination, or investigatory proceedings relevant to the request; listing of all counsel participating in the case; the nature and status of any previous civil/military court action in this or related cases; and comment on the availability of the requesting counsel in relation to the overall workload in the office.

c. If the request is approved by the Judge Advocate General or Director, Naval Legal Service, as appropriate, any expenses incurred as a result of such approval will be at no cost to the Government.

Chapter XV

PAYMENTS DUE MENTALLY INCOMPETENT MEMBERS, PHYSICAL EXAMINATIONS OF SUCH MEMBERS, AND TRUSTEE DESIGNATIONS

1501 PURPOSE

1502 SCOPE

1503 AUTHORITY TO APPOINT TRUSTEES TO RECEIVE FEDERAL MONIES

1504 PROCEDURES

1505 RECORDS

1506 TRAVEL ORDERS

1507 STATUS OF PAY ACCOUNT

1508 PROCEDURE FOR DESIGNATION OF A TRUSTEE

1509 EMERGENCY FUNDS

1510 REPORTS AND SUPERVISION OF TRUSTEES
- a. Annual accounting report
- b. Failure to submit a report
- c. Declaration in default
- d. Termination of payments
- e. Demand for payment
- f. Final accounting
- g. Finance Centers

1511 AUTHORITY OF THE JUDGE ADVOCATE GENERAL TO ISSUE INSTRUCTIONS

1501 PURPOSE

To prescribe regulations for implementation of chapter 11 of title 37, *United States Code*, entitled "Payments to Mentally Incompetent Persons." See Appendix A-15-a.

1502 SCOPE

a. Chapter 11 of title 37, *United States Code*, grants authority, in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction, for the designation by the Department of the Navy of a trustee to receive the active duty pay and allowances, amounts due for accrued or accumulated leave, or retired pay or retainer pay, that are otherwise payable to a member who is found by competent medical authority to be mentally incapable of managing his/her affairs.

b. The term "member" as used in this chapter refers to:

(1) Members of a uniformed service who are on active duty (other than for training) or who are on the retired list of that service; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

1503 AUTHORITY TO APPOINT TRUSTEES TO RECEIVE FEDERAL MONEYS

a. Pursuant to 37 U.S.C. § 602 (1976), the Judge Advocate General and the Deputy Assistant Judge Advocate General (Civil Affairs) [hereafter referred to in this chapter as the DAJAG (CA)] are delegated authority to appoint trustees to receive and administer Federal moneys for members of the naval service.

b. The commanding officer of any naval medical facility may designate an officer of the command to receive and receipt for up to $30 per month from the accrued pay of a member of the naval service who has been found incapable of handling his/her own affairs and is a patient at a naval medical facility under the following conditions:

(1) A trustee has not been designated by cognizant authority and a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction;

(2) The member has no other funds available for use in his/her own behalf; and

(3) The funds are necessary for the purchase of items necessary for the comfort of the member.

This section shall be cited on the pay voucher as authority for payment and receipt of such monthly comfort money.

1504 PROCEDURES

a. The commanding officer of the cognizant naval medical facility shall convene a board of not less than three medical officers or physicians, one of who is specially qualified in the treatment of mental disorders, when there is evidence that a member of the naval service or a member of another uniformed service who is a patient in the naval medical facility may be incapable of handling his/her affairs. Membership of the board may include members of the Reserve components on active or inactive duty.

b. At least one officer on the board, preferably a psychiatrist, shall personally observe the member and ensure that the member's medical record, particularly that portion concerning his/her mental health, is accurate and complete. Each board member shall sign the report of the board and shall certify whether the servicemember is or is not mentally capable of managing his/her affairs.

c. The Judge Advocate General or DAJAG (CA) may direct competent authority to convene a board in accordance with this section to determine the mental capability of a member of the naval service to manage his/her affairs. In appropriate circumstances, a commanding officer or administrator of any Federal medical facility may be requested by the Judge Advocate General or other cognizant authority to convene such a board.

1505 RECORDS

a. The convening authority shall forward one copy of the record of proceedings of each board convened pursuant to section 1504, above, as follows:

(1) *Naval Service*. Judge Advocate General (Code 12), Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332;

(2) *Army.* Commanding General, Finance Center, U.S. Army, Indianapolis, Indiana 46249, Attention: (Central Pay Operations in the case of active-duty personnel, or Retired Pay Division in the case of retired personnel);

(3) *Air Force.* Director of Military Personnel, Headquarters USAF, AFMPC, Washington, D.C. 20030;

(4) *Coast Guard.* Commandant, U.S. Coast Guard (Code C-PS/43), Washington, D.C. 20593;

(5) *National Oceanic and Atmospheric Administration (NOAA).* Director, NOAA Corps, NOAA, Rockville, Maryland 20852; and

(6) *Public Health Service.* Director, Commissioned Personnel Operations Division (OPM-OM), Room 435, 5600 Fishers Lane, Rockville, Maryland 20857.

b. In the case of a finding that a servicemember is not mentally capable of managing his/her affairs, the convening authority, in the forwarding endorsement, shall set forth the name, relationship, and address of the member's next of kin and such other pertinent data as may be available to assist in identification of a trustee. This additional information need not be furnished where a trustee or other legal representative has been previously designated and the designation is still in effect.

1506 TRAVEL ORDERS

In appropriate cases, the Chief of Naval Personnel or Commandant of the Marine Corps shall issue travel orders to a member of the naval service to appear before an examining board convened for the purpose of determining whether the member is or is not mentally capable of managing his/her affairs. In the case of permanently retired members of the naval service, however, travel expenses in connection with an appearance before a board convened pursuant to section 1504, above, shall be at no cost to the Government unless the Judge Advocate General or DAJAG (CA) determines that unusual hardship exists and directs that appropriate authority fund the travel expenses.

1507 STATUS OF PAY ACCOUNT

The Judge Advocate General or DAJAG (CA) will direct appropriate disbursing officials to suspend the pay of servicemembers found to be mentally incapable of managing their affairs. Thereafter, the Judge Advocate or DAJAG (CA) will direct payment of monies to (1) the appointed trustee; (2) the committee, guardian, or other legal representative appointed by a court of competent jurisdiction; or (3) directly to the member following a determination that the member is capable of managing his/her affairs. Disbursing officers shall seek direction from the Judge Advocate General when information from other sources indicates a member is not competent to manage his/her affairs.

1508 PROCEDURE FOR DESIGNATION OF A TRUSTEE

Upon receipt of a report from medical authorities that a member has been found mentally incapable of managing his/her affairs, the Judge Advocate General or DAJAG (CA) shall initiate action to appoint a trustee, provided a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction. The Judge Advocate General or DAJAG (CA) may direct any appropriate Navy or Marine Corps activity to interview prospective trustees and make recommendations concerning their suitability. The interviewing officer will determine whether the prospective trustee can obtain an appropriate bond as directed by the Judge Advocate General or DAJAG (CA) and ascertain that the prospective trustee is willing to execute an affidavit acknowledging that all monies shall be applied solely to the use and benefit of the member and his/her legal dependents and that no fee, commission, or charge, for any service performed by the trustee except for payment of the required bond, can be made from Federal monies. The interviewing officer will forward recommendations to the Office of the Judge Advocate General for appropriate action.

1509 EMERGENCY FUNDS

Until such time as a trustee is appointed, the Judge Advocate General or DAJAG (CA) may appoint the member's commanding officer or other appropriate official to receive up to $1000 due from the account of the member without the necessity of a bond. The money shall be applied for the benefit of the member and his/her legal dependents.

1510 REPORTS AND SUPERVISION OF TRUSTEES

a. *Annual accounting report.* The trustee designated under this chapter shall submit accounting reports annually or at such times as the Judge Advocate General or DAJAG (CA) directs. The report shall account for all funds received from the Navy or Marine Corps on behalf of the servicemember. NAVJAG Forms 5800/13 (Rev. 8-76) and 5800/13A (Rev. 8-76) will be provided for these reports. When requested by the Judge Advocate General or DAJAG (CA), bank records, receipts, canceled checks, or vouchers shall be attached to the report. Report Control Symbols JAG 5800-5 and 5800-5A have been assigned to the reports.

b. *Failure to submit a report.* If an accounting is not received by the date designated by the Judge Advocate General or DAJAG (CA), or an accounting is forwarded which is unsatisfactory, the Judge Advocate General or DAJAG (CA) shall notify the trustee in writing. The notice shall inform the trustee that he or she is in violation of the regulations concerning trustees promulgated pursuant to 37 U.S.C. §§601-604. The notice shall further state that if a satisfactory accounting is not received by the Judge Advocate General or DAJAG (CA) within an appropriate number of days from the date of receipt of the notification, the trustee will be declared in default of the trustee agreement and shall become liable for any unaccounted for monies.

c. *Declaration in default.* If the trustee fails to submit a satisfactory accounting within the time designated by the Judge Advocate General or DAJAG (CA), the trustee shall be declared by the Judge Advocate General or DAJAG (CA) to be in default of the trustee agreement.

d. *Termination of payments.* If a trustee is declared to be in default of the trustee agreement, the Judge Advocate General or DAJAG (CA) shall request the appropriate Finance Center to terminate payments to the trustee and, if necessary, appoint a successor trustee.

e. *Demand for payment.* At the time of the declaration of such default, the Judge Advocate General or DAJAG (CA) shall notify the defaulting trustee that he or she is in default of the trustee agreement. The surety for the trustee shall also be notified at this time concerning the account. The notifications to the trustee and surety shall state the reasons for default, the amount of indebtedness to the Government, and shall demand payment. The notifications shall also state that if payment, in full, of the monies due the Government is not received by the Office of the Judge Advocate General within an appropriate number of days from the date of receipt of the notifications, the account may be forwarded as the Judge Advocate General or DAJAG (CA) may direct, to the Department of Justice for recovery of the monies through appropriate civil action.

f. *Final accounting.* When payments under this chapter are terminated due to the death of the member, his or her restoration to capacity, the replacement of the trustee, or for any other reason, other than default of the trustee agreement, the trustee shall submit a final accounting to the Judge Advocate General or DAJAG (CA), as appropriate. Upon approval of the report, the trustee and the surety will be discharged from liability. In the event of death or disability of a trustee, the final accounting shall be filed by the legal representative of the trustee.

g. *Finance Centers.* The Commanding Officer, Navy Finance Center, Commanding Officer, Marine Corps Finance Center, or the cognizant disbursing officer shall notify the Judge Advocate General or DAJAG (CA) of any fact affecting the pay of a member who is not mentally capable of managing his/her affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or notice of appointment of a legal representative by a court of competent jurisdiction. At the request of the Judge Advocate General or DAJAG (CA), the cognizant disbursing officer shall report all disbursements from the servicemember's account.

1511 AUTHORITY OF THE JUDGE ADVOCATE GENERAL TO ISSUE INSTRUCTIONS

The Judge Advocate General and the DAJAG (CA) may issue instructions for implementation of this chapter.

Chapter XVIII

CUSTOMS DUTIES AND IMPORT AND EXPORT RESTRICTIONS

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1837 REGULATIONS

PART A–SCOPE OF THIS CHAPTER

1801 GENERAL

This chapter, published with the concurrence of the Commissioner of Customs, sets forth the various provisions of law and regulations which govern exemptions from customs duties and internal revenue taxes available to military and civilian personnel. It does not, however, detail in their entirety all of the Customs Regulations that may be applicable to every situation. Generally speaking, customs duties must be paid on articles imported or brought into the customs territory of the United States, which consists of the 50 States, the District of Columbia, and Puerto Rico, unless, and to the extent, an exemption may be applicable. Among the articles which may be within an exemption are:

a. Articles accompanying returning residents and unaccompanied articles from insular possessions of the United States.

b. Articles accompanying returning nonresidents

c. Personal and household effects of persons in the service of the United States returning at the termination of extended duty assignments outside the customs territory of the United States.

d. Sea-store cigarettes.

e. Articles sent as bona fide gifts from persons in foreign countries to persons in the United States.

This chapter also includes various other provisions of law and regulations relating to import and export restrictions of particular interest to military personnel. See Appendix A-18-a for a tabular portrayal of customs exemptions.

PART B–ARTICLES ACQUIRED BY RETURNING RESIDENTS

1802 BASIS FOR EXEMPTION

Exemptions for returning residents are provided in items 813.30 and 813.31 of the Tariff Schedules of the United States (19 USC 1202). Item 813.30 sets forth the articles which may be exempted, and item 813.31 sets value limitations and time requirements. These items must be read together to determine the basis for the exemption.

1803 ELIGIBILITY FOR EXEMPTION

a. *Visit to foreign country or possession of the United States.* The resident must be returning from:

(1) The Virgin Islands of the United States, without regard to the length of time the person has remained outside the territorial limits of the United States; or

(2) Mexico, without regard to length of time a returning resident has remained outside the territorial limits of the United States, unless the resident returns through a port as to which there is in effect a special regulation or instruction requiring that the returning resident, in order to obtain the benefit of the $300 exemption for articles, shall have remained beyond the territorial limits of the United States for such period, not to exceed 24 hours, as shall be specified in the special regulation or instruction; or

(3) Any other country or any other possession of the United States except Puerto Rico (see section 1801) after having remained outside the customs territory of the United States for a period of not less than 48 hours.

b. *Frequency of exemptions.* The resident must not have claimed an exemption under this item within the 30 days immediately preceding his arrival. If he has, only $25 worth of articles for personal or household use will be exempted.

1804 COMPUTATION OF TIME REQUIREMENTS

a. *Computation of the 48-hour period.* The 48-hour period abroad must be computed exactly. For example, a resident leaving the United States territory at 1330 on 1 June would complete the 48-hour period at 1330 on 3 June.

b. *Computation of the 30-day period.* The 30-day period immediately preceding the resident's return is computed by excluding the day of arrival and counting backward 30 days. Thus, a resident arriving on 28 May would not be entitled to the exemption if he had taken advantage of such exemption on or after the preceding 28 April.

1805 SCOPE OF EXEMPTION

a. *Articles exempted.* Each resident returning to the customs territory of the United States is entitled to exemption from duty and internal revenue tax on articles for his personal or household use which were purchased or otherwise acquired abroad merely as an incident of the journey from which he is returning and which accompany him on his arrival. The exemption also applies to articles not accompanying the resident which were acquired in American Samoa, Guam, or the Virgin Islands of the United States. This exemption does not apply to articles intended for sale or acquired for the account of another person, with or without compensation for the service rendered, but may include articles intended for use as bona fide gifts. See Part I concerning importation of privately-owned motor vehicles.

b. *Value limitations.* The aggregate fair retail value in the country of acquisition of such articles shall not exceed $300, or in the case of a resident arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, $600, of which not more than $300 shall have been acquired elsewhere than in such insular possessions.

c. *Alcoholic beverages.* Alcoholic beverages may be included in the exemption of an individual who has attained the age of 21, subject to the following limitations:

(1) One liter in the case of an individual who does not arrive directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States.

(2) Four liters in the case of an individual who arrives directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, not more than one liter of which shall have been acquired elsewhere than in such insular possessions.

(3) Customs will not release alcoholic beverages for use in any state in violation of its laws. Check with the liquor authorities of the state in which the anticipated port of arrival from abroad is located.

d. *Cigars and cigarettes.* U.S. domestic cigars and cigarettes which were exported under internal revenue laws and regulations without the payment of tax may be included within this exemption. Not more than 200 cigarettes and 100 cigars may be included, except that not more than 1,000 cigarettes, not more than 200 of which shall have been acquired elsewhere than in American Samoa, Guam, or the Virgin Islands of the United States may be included.

e. *Flat duty rate.* Articles valued at up to $600 in excess of the exemption are subject to a flat 10% rate of duty based on the fair retail value in the country of acquisition when they accompany the returning resident. The flat rate is only 5% for articles acquired in American Samoa, Guam, or the Virgin Islands of the United States. The 5% rate on articles from insular possessions of the United States applies whether or not the articles accompany the resident on his arrival.

1806 FAMILY GROUPING OF EXEMPTIONS

When members of a family *residing in one household* travel together on their return to the United States, the exemption to which the individual members of the family are entitled may be grouped and allowed without regard to which member is the owner of the articles, except in the case of alcoholic beverages when a member has not attained the age of 21. Furthermore, the flat rate of duty on articles valued at up to $600 in excess of the exemption may be grouped. For example, an eligible returning family of four could import up to $2400 worth duty free of articles and an additional $2400 of articles subject to the 5% flat rate.

PART C–ARTICLES ACCOMPANYING NONRESIDENTS

1807 BASIS FOR EXEMPTION

Exemptions for persons arriving in the United States who are not returning residents are contained in items 812.10-812.40 of the Tariff Schedules of the United States (19 U.S.C. 1202). Customs regulations pertaining to these provisions are set forth in 19 CFR § § 148.41-148.46.

1808 ELIGIBILITY FOR EXEMPTION

In TD 72-92 the Bureau of Customs held that a person who would otherwise be considered a returning resident of the United States may be classified as a nonresident on entering the United States for a short visit before returning abroad. As a result, military and civilian personnel assigned to extended duty outside the customs territory of the United States, and members of their families, returning to the United States for a short visit, such as for temporary duty, or on leave, or for other personal reasons, with or without orders, may claim customs status either as a returning U.S. resident (*See* Part B above) or as a nonresident.

1809 SCOPE OF EXEMPTION

a. *Articles for personal use.* All wearing apparel, articles of personal adornment, toilet articles, and other similar personal effects. The latter includes all articles intended and appropriate for the personal use of the nonresident while traveling, such as hunting and fishing equipment, pets etc. The exemption applies only to articles actually owned by the nonresident and in his possession at the time of, or prior to, departure for the United States. Articles so entered must be intended for personal use only and not as a gift or for sale.

b. *Gifts.* An arriving nonresident who intends to remain in the United States for not less than 72 hours may claim as free of duty and internal revenue tax articles not over $100 in aggregate value which accompany him and are to be disposed of as bona fide gifts. (See 1809(c) for limitations on alcoholic beverages, cigars, and cigarettes.) This exemption for gifts may be allowed only if the nonresident has not claimed the exemption within the immediately preceding six months.

c. *Tobacco products and alcoholic beverages.*

(1) *For personal use.* One hundred cigars or 200 cigarettes, or 2 kilograms of smoking tobacco, and not over 1 liter of alcoholic beverages may be entered duty free by an adult nonresident for personal use and not for sale or gift purposes. The exemption for tobacco products may be applied proportionately; for example, 50 cigars and 100 cigarettes, or 25 cigars, 50 cigarettes, and 1 kilogram of smoking tobacco.

(2) *For gifts.* A nonresident who is allowed the $100 gift exemption may not include alcoholic beverages or cigarettes but may include up to 100 cigars.

d. *Flat duty rate.* Articles for personal or household use, or for use as bona fide gifts valued up to $600 in excess of the exemption are subject to a flat 10% rate of duty based on the fair retail value in the country of acquisition if they accompany the nonresident on his arrival. The flat rate is only 5% for articles acquired in American Samoa, Guam, or the Virgin Islands of the United States. The 5% rate on articles from these insular possessions of the United States applies whether or not the articles accompany the nonresident on his arrival.

PART D – PERSONAL AND HOUSEHOLD EFFECTS EXEMPTIONS OF PERSONS IN THE SERVICE OF THE UNITED STATES RETURNING UPON THE TERMINATION OF EXTENDED DUTY OUTSIDE THE CUSTOMS TERRITORY OF THE UNITED STATES

1810 BASIS FOR EXEMPTION

Exemptions for the personal and household effects of persons in the service of the United States who return upon termination of extended duty at a post or station outside the customs territory of the United States are provided in item 817.00 of the Tariff Schedules of the United States (19 USC 1202). The statute providing this exemption empowers the Secretary of the Treasury to prescribe limitations on the importation of alcoholic beverages and tobacco products, and to define the requirement that the person "returns to the United States upon the termination of assignment to extended duty." Limitations and definitions made pursuant to this statute are contained in Customs Regulations, 19 CFR § 148.74.

1811 ELIGIBILITY FOR EXEMPTION

a. *Persons eligible.* This exemption is available to any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty at a post or station outside the customs territory of the United States, or to returning members of his family who have resided with him at such post or station, or to any person evacuated to the United States under Government orders or instructions, whether in the service of the United States or not. Employees of the American Red Cross, of contractors employed by the United States Government and of military banks, and persons in a comparable category are not considered to be in the service of the United States Government even though they are on duty with the Navy in an overseas area.

b. *Extended duty requirement.* Under Customs Regulations, 19 CFR § 148.74(d), the requirement that the person "returns to the United States upon the termination of assignment to extended duty" shall be considered met in any one of the following cases:

(1) The person is returning upon the termination of a tour of duty outside the customs territory of the United States of at least 140 days duration.

(2) The person is returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the customs territory of the United States, regardless of the duration of the duty.

(3) The person returns to the United States upon the termination of a tour of duty at any time after leaving the United States for duty of not less than 140 days outside the customs territory of the United States.

(4) The person, although not returning to the United States, is ordered by the Government agency involved from duty at a post or station outside the customs territory of the United States to duty at another post or station outside the customs territory of the United States necessitating the return to the United States of his personal and household effects.

(5) A crewmember, including a member of a command, serving on a United States naval vessel or supporting naval vessel when it departs from the United States on an intended deployment of 120 days or more outside the country and who continues to serve on the vessel until it returns to the United States may be considered as returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the customs territory of the United States, regardless of the duration of the deployment, under the Customs Regulations, 19 CFR § 148.74(d)(2).

c. *Interim returns not included.* A person returning on leave, except reemployment leave at the termination of assignment to extended duty as defined in section 1808b, or otherwise returning before the termination of an assignment to extended duty outside the customs territory of the United States, with or without orders covering the return, is not entitled to this exemption. An individual returning to the United States under orders on a temporary duty assignment at the termination of which he is returned to his duty station abroad to resume his regular duties is not regarded as returning to the United States at the termination of an assignment to extended duty outside the customs territory of the United States.

1812 SCOPE OF EXEMPTION

a. *Articles exempted.* This exemption from duty and internal revenue tax applies to personal and household effects of the eligible individuals. It does not apply to articles intended for sale, or imported for the account of any person not entitled to the exemption. Although this does not prohibit the subsequent use of such articles as bona fide gifts, it should be noted that any reimbursement or compensation, even though there is no profit to the importer, will disqualify an article as a bona fide gift. See Part I concerning importation of privately-owned motor vehicles.

b. *Possession abroad requirement.* There is no period of use abroad required, but articles not in the possession of the person claiming the exemption while abroad cannot be considered personal and household effects within the meaning of the law as interpreted by the Customs Bureau. The Bureau has held that physical possession is encompassed within the meaning of the term "possession abroad." Circumstances whereby the importer has been in such proximity to the specific property that immediate control or possession of the articles may have occurred upon or subsequent to sale constitute physical possession (e.g., the purchase of an automobile upon inspection of the specific vehicle in the showroom of a dealer). Mere contingent possibility of possession does not constitute "possession abroad." Situations in which this requirement is not met are:

(1) A person orders a car which is to be shipped from a factory in another city directly to the United States without being in the proximity of the purchaser prior to shipment. This is not sufficient to meet the requirement of possession.

(2) Purchaser designates a friend to take possession. Possession by an agent is never sufficient.

c. *Alcoholic beverages and tobacco products.* A total of not more than one gallon of alcoholic beverages and not more than 100 cigars may be imported free of duty and internal revenue tax as personal effects subject to the following additional limitations of Customs Regulations, 19 CFR § 148.74(c):

(1) These articles must accompany the person making the claim for free entry upon his arrival in the United States.

(2) Not more than one quart of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions.

(3) The individual has not concurrently claimed exemption as a returning resident under items 813.30 and 813.31 of the Tariff Schedules of the United States as discussed in sec. 1805 of this chapter.

(4) If the person claiming the exemption is other than one in the service of the United States, he shall have attained the age of 21. Customs officials will not release alcoholic beverages for use in any state in violation of its laws.

(5) Limitations on all tobacco products other than cigars correspond to those set forth in sec. 1805d of this chapter.

(6) As this exemption is subject to regulation by the Commissioner of Customs, it may be changed at any time on short notice.

1813 WAIVERS IN CASES OF HARDSHIP

In any case where the limitation on the quantity of alcoholic beverages and tobacco products, or the failure of the person to meet the requirement that he is returning from "extended duty," as defined in section 1808b above, will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement if he deems such waiver warranted by the facts. Any situation believed to be within this provision may be submitted to the Judge Advocate General for preliminary evaluation and submission of a request for waiver to the Commissioner in appropriate cases.

PART E–SPECIAL EXEMPTION FOR SEA-STORE CIGARETTES

1814 BASIS FOR EXEMPTION

This is an administrative exemption from duty and any internal revenue tax, imposable by reason of importation, made by the Commissioner of Customs under the authority of 19 USC 1321(a)(2)(B).

1815 ELIGIBILITY FOR EXEMPTION

When a U.S. naval vessel has proceeded beyond the territorial limits of the United States, tax-free (sea-store) cigarettes may be sold to crew members. If, however, the vessel does not visit a foreign port or other port outside the customs territory of the United States on such a trip, and if the requirements of section 1808b of this chapter relating to extended duty are not met, the exemptions provided for in parts B and C are not applicable to U.S. naval personnel. Under these circumstances, however, the expense and inconvenience to the Government of collecting duties on small quantities of cigarettes would be disproportionate to the amount of revenue which would be collected. Accordingly, the Commissioner of Customs has granted an administrative exemption for limited quantities of tax-free cigarettes.

1816 SCOPE OF EXEMPTION

Under the circumstances described in section 1815, two opened packs of cigarettes may be taken ashore within the Customs territory of the United States by a crew member at any one time for his own personal use without duty or internal revenue tax liability and without customs entry. The total quantity of such cigarettes brought ashore by any crew member under this exemption after any voyage beyond the territorial limits of the United States shall not exceed 15 packs.

1817 ENFORCEMENT

The policing of the landing of cigarettes under this exemption is primarily the responsibility of naval authorities. Additional regulations or more restrictive limitations may be imposed by cognizant commanders if deemed necessary to prevent violations.

PART F–GIFTS SENT FROM FOREIGN COUNTRIES

1818 BASIS FOR EXEMPTION

Exemption from duty and any tax imposed by reason of importation of gifts is provided in 19 USC 1321(a)(2)(A) and Customs Regulations, 19 CFR § 145.32.

1819 ELIGIBILITY FOR EXEMPTION

Persons in a foreign country are authorized to send gifts to persons in the United States.

1820 SCOPE OF EXEMPTION

a. *Bona fide gift requirement.* The articles must be bona fide gifts, that is, given outright, without compensation or promise of compensation.

b. *Value limitations.* The total value of all gift shipments received in one day by any donee with exemption from duty and tax may not exceed $25.00. This amount is increased to $40.00 if the gift is from American Samoa, Guam, or the Virgin Islands of the United States. Value is the fair retail value in the country of shipment.

c. *Exclusion of alcoholic beverages and tobacco products.* Alcoholic beverages and tobacco products are not included in this exemption from duty, nor are perfumes containing alcohol if the shipment is valued at more than $5.00.

1821 MAILING OF GIFTS

Detailed mailing procedures are contained in OPNAVINST 5112.1 series, U.S. Navy Postal Instructions, chap. 7, sec. 4.

PART G–MISCELLANEOUS PROVISIONS

1822 ALCOHOLIC BEVERAGES, CIGARS, AND CIGARETTES FROM PUERTO RICO

Puerto Rico is included within the customs territory of the United States, and accordingly customs duties are not applicable to Puerto Rican alcoholic beverages, cigars, or cigarettes brought to the United States. However, when they are brought from Puerto Rico into the United States they are subject to a tax equal to the internal revenue tax imposed on the production in the United States of like items. Neither of the exemptions discussed in Parts B and C is applicable. Inspection and collection of this tax is normally performed by customs officers acting for the Internal Revenue Service.

1823 STATE LAWS

The Federal law does not provide exemption from State liquor or tobacco taxes. Customs officials will not release alcoholic beverages or tobacco products if they are to be shipped into a state in violation of its laws.

1824 OTHER REGULATIONS

Information contained herein is not intended to alter Navy Regulations, Art. 1150, or other regulations issued by cognizant commanders governing or prohibiting transportation of alcoholic beverages aboard naval aircraft, ships, or craft, including MSC vessels, or their shipment as household effects.

1825 ABUSE OF PRIVILEGES

Duty-free and tax-free importation of articles of any type and in any quantity is a privilege under the law which may be readily lost in case of abuse. The alcoholic beverage and tobacco allowance in the extended duty exemption, as well as the administrative exemptions for gifts and sea-store cigarettes, are subject to regulation by the Commissioner of Customs. The Commissioner has indicated in the past that abuses of exemptions may result in their curtailment.

1826 ACTION AVAILABLE TO COMMANDS

Several courses of action may be taken by commanders, particularly overseas, to detect and reduce abuses of existing privileges:

a. *Quantity limitations.* Quantity limitations may be placed on the sales of alcoholic beverages and tobacco products.

b. *Educational programs.* Educational programs may include explanations of the advantages of present exemptions, possible loss of exemptions by reason of abuse, and amenability of violators to civil penalties, criminal prosecution, and forfeiture of the merchandise involved.

c. *Foreign exchange and currency violations.* The special exemption for sea-store cigarettes reflected in Part D of this chapter is in recognition of the fact that sales cannot be so precisely regulated that each crew member will have consumed all such cigarettes in his possession at the time of the return of the vessel within the territorial limits of the United States. Nevertheless, sales should be conducted with the objective of having only minimal quantities of such cigarettes in the hands of crew members at the time of such return. Even when the vessel is deployed on an extended cruise beyond the customs territory of the United States, a build-up of excessive quantities of sea-store cigarettes in the hands of crew members should be precluded to prevent violations of customs laws of host countries. In this regard, it should be noted that, in a number of countries, little or no foreign exchange or customs control is exercised by the host country within the United States facilities or over United States personnel, vessels, vehicles, or aircraft. It is the responsibility of all Navy and Marine Corps overseas commanders to take such measures as may be required to prevent violations of applicable local laws or regulations concerning currency and customs matters. Additionally, all personnel should be instructed and cautioned regarding the punitive consequences to themselves and the deleterious effect on the continued presence of United States forces in a foreign country and their relations with the host government which illegal currency transactions and customs violations can produce.

d. ***Household effects shipments.*** Personnel shipping household effects from overseas to the United States should be reminded of their responsibilities incident thereto. It is imperative that they read and be aware of the contents of the "Owner's U.S. Customs Declaration" (DD Form 1252) covering duty-free entry of personal property shipped to the United States. Specific attention should be called to the provision indicating that the owner will not ship personal property to the United States as an accommodation for others, or for sale, barter, or exchange. A further safeguard by commanders against violations of customs regulations is possible through assurance that commercial contractors and carriers do not pack or load for shipment any article prohibited by pertinent law or regulations. Packing and crating contractors and all carriers providing through bill of lading service from overseas areas will be instructed not to pack or load for shipment articles prohibited by applicable law or regulations. If such articles are presented by the owner to be included in a household goods shipment, a representative of the commercial concern will be directed to report the circumstances to the transportation or inspecting officer. This should not be construed as in any way relieving the owner of his responsibilities, but is designed to assist in detecting and discouraging violations.

1827 PROSECUTION OF VIOLATIONS

Any person who violates the customs laws or regulations discussed above may be prosecuted either in a Federal court or, if subject to the UCMJ, before a court-martial. As an example of the punishment that may be imposed, unlawful importation of tax-free cigarettes or other tobacco products may be punished under 18 USC 545 by a fine of not more than $10,000 or imprisonment for not more than five years, or both, if tried in a Federal court. If tried by a general court-martial as a crime not capital under Article 134 of the UCMJ, authorized punishments could include confinement at hard labor for not more than five years, total forfeitures, reduction to the lowest pay grade, and a punitive discharge.

1828 METRIC MEASUREMENTS

Title 27 of the Code of Federal Regulations has been amended to implement the adoption of metric standards of fill for alcoholic beverages, and deals basically with the marking, labeling, and recordkeeping aspects of alcoholic beverage importation. As such, these changes are primarily aimed at commercial business dealers and do not deal directly with personal exemptions from tariff schedules. It is clear, however, that by 1980 many alcoholic beverage containers designed for import into the United States will be utilizing the metric system of measurement. The following conversion chart has been prepared for the use of legal officers if questions regarding this change should arise:

One quart equals 0.95 liters.
One gallon equals 3.785 liters.
One pound equals 0.45 kilograms.

PART H—PROHIBITED AND RESTRICTED ARTICLES

1829 GENERAL

Certain merchandise is either prohibited from entering the United States or must meet special requirements. The information set forth in this part is general in nature, and the lists below are incomplete. Guidance in specific cases may be sought from the U.S. Consulate, or a request for additional information may be addressed to the Judge Advocate General.

1830 RESTRICTED ARTICLES

Restricted articles include the following:

a. Firearms and ammunition;

b. Fruits, vegetables, plants, and plant products;

c. Livestock and meats;

d. Pets; and

e. Certain trademarked articles acquired abroad. The importation of merchandise of foreign or domestic manufacture is prohibited if such merchandise bears a mark or name which copies or simulates a trademark or trade name recorded with the Treasury Department. An exemption can be claimed for one article of a type bearing a protected trademark if the article accompanies the person entering the United States, is for his personal use, and is not for resale. If sold within one year of importation, the article or its value is subject to forfeiture. This exemption may only be used by the same person once each 30 days for the same type of merchandise. A greater quantity of the article may be imported with the written consent of the owner of the protected trademark or trade name. The consent does not apply to articles mailed to the United States or to articles imported for resale. A copy of the list of protected items may be obtained from any U.S. Customs Office.

f. Endangered fish and wildlife, marine mammals, and marine mammal products (*e.g.*, scrimshaw). The importation of such items is prohibited, with certain exceptions, which exceptions, require in most instances a permit from, certification by, or registration with the Department of Commerce. Refer to 16 U.S.C. §§1361-1384 and 50 CFR Part 216.

1831 PROHIBITED ARTICLES

Prohibited articles include the following:

a. Lottery tickets.

b. Narcotics;

c. Obscene material;

d. Printed matter advocating treason or insurrection against the United States;

e. Switch-blade knives; and

f. Wild bird feathers

1832 ARTICLES REQUIRING TREASURY LICENSE FOR IMPORTATION

a. *Foreign Assets Control Regulations.* The Foreign Assets Control Regulations apply to both the purchase abroad and the importation of all merchandise originating in certain countries, and to all goods containing components from certain countries. Items from these countries are prohibited without a Treasury license which may be considered unavailable for all practical purposes to military or civilian government personnel. For items subject to duty, the rate will be considerably higher than the rate applied to goods imported from other countries.

b. *Copies of regulations.* Copies of current Foreign Assets Control Regulations may be obtained from the Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

PART I–IMPORTATION OF PRIVATELY OWNED MOTOR VEHICLES

1833 FEDERAL SAFETY STANDARDS

a. *Requirements.* Motor vehicles and motor vehicle equipment manufactured on or after 1 January 1968 and imported into the United States are subject to Federal motor vehicle safety standards promulgated by the Department of Transportation in 23 CFR Part 255. In general, a motor vehicle manufactured on or after 1 January 1968 will not be permitted entry into the United States unless it conforms to applicable safety standards in effect at the time the vehicle was manufactured.

b. *Entry procedures.* Compliance with these safety standards should be established by certification in the form of a label or tag permanently affixed to the vehicle, and customs officials will not refuse entry to a vehicle which bears such a valid certification. Vehicles may be cleared through customs without such certification in certain circumstances described in 19 CFR Part 12 including the following:

(1) Vehicles which were manufactured before the effective date of the safety standards. (A declara-

tion to this effect by the importer or consignee is required.)

(2) Vehicles not manufactured in conformity with the safety standards, but which have been altered to conform prior to importation. (A certification by the manufacturer or contractor is required.); and

(3) Vehicles which do not conform to the safety standards but which the owners promise to bring into conformity within 90 days and for which the owners post bond to that effect.

PART J–IMPORTATION OF PRIVATELY OWNED FIREARMS AND AMMUNITION

1834 BACKGROUND

The Gun Control Act of 1968, P.L. 90-18, 18 U.S.C. §§921-928, sets forth the controls concerning the transportation, shipment, receipt, and importation of privately-owned firearms and ammunition. The Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, is responsible for the general administration and enforcement of the Act. The Bureau of Customs has responsibility for the enforcement of the import aspects as they relate primarily to the clearance of imported firearms and ammunition. Specific provisions concerning the importation of firearms and ammunition by members of the U.S. Armed Forces are found in 26 CFR §178.114.

1835 SERVICE REGULATIONS

Chapter 10, DOD Instruction 5030.49-R of 15 February 1973 (Customs Inspections), contains detailed instructions implementing the provisions of the Gun Control Act of 1968 and related laws and regulations as they apply to the importation of firearms and ammunition by DOD personnel. The chapter, however, does not apply to the control, registration or shipment of war trophy firearms, which are governed by OPNAVINST 3460/MCO 5800 series. DOD Instruction 5030.49-R can be obtained from the Naval Publications and Forms Center, Philadelphia, Pennsylvania, as enclosure (1) to OPNAVINST 5840.3 of 26 February 1973.

PART K–IMPORTATION OF PRIVATELY OWNED PLEASURE BOATS

1836 FEDERAL SAFETY STANDARDS

a. Foreign manufactured non-commercial pleasure boats entering the United States after November 1, 1972, are subject to the Federal Boat Safety Act of 1971 (46 USC *et seq.*), and Coast Guard Safety Regulations in 33 CFR Parts 181 and 183. In general, entry is not permitted unless such vessels are in compliance with safety standards and compliance is certified or the vessel is subject to certain specified exceptions.

b. Effective July 10, 1976, Customs Regulations (19 CFR Part 12) were amended to prescribe procedures. Evidence of compliance generally required for entry includes a certificate of compliance affixed to the vessel by the manufacturer or importer. Vessels may be cleared through customs without such certification in certain circumstances specified in the regulations including the following:

(1) Where a declaration is filed to the effect that the vessel was manufactured prior to the effective date of the safety standards.

(2) Where a declaration is filed, along with an appropriate certification to the effect that the non-complying vessel has been altered to comply with specified standards.

(3) Where the vessel has been previously exempted from the standards by the Coast Guard.

(4) Where the importer certifies by declaration and posts a performance bond to assure that the vessel will be brought into compliance within 90 days following entry and that the vessel will neither be sold nor used prior to completion of such alterations.

PART L—EXPORT CONTROLS

1837 REGULATIONS

In addition to the export regulations exercised by the Department of Commerce (15 CFR 368-99), the export of arms and defense articles on the U.S. Munitions List is subject to control and licensing by the Department of State and the Department of Defense. For regulations see: 22 CFR, Subchapter M of Chapter I; DOD Directive 5030.28 series; SECNAV Instruction 5740.20 series; and OPNAV Instruction 4000.36 series.

Chapter XIX
LEGAL ASSISTANCE

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1901 PURPOSE

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the naval service since 1943. The program has improved the morale of personnel and reduced disciplinary problems since its inception. The purpose of this Chapter is to provide guidelines for the continuation of the program.

1902 POLICY

Personal problems that remain unresolved adversely affect morale and efficiency and frequently result in behavior requiring disciplinary or administrative action. Prompt and understanding aid in resolving these problems is an effective preventive. Accordingly, it is the policy of the Department of the Navy to maintain from available resources a legal assistance program to make eligible persons aware of their legal rights and obligations and to assist military personnel and their dependents in obtaining adequate legal advice and services from within the military service.

1903 LEGAL ASSISTANCE OFFICERS

All Navy and Marine Corps judge advocates on active duty or inactive duty for training, and all civilian lawyers under the cognizance of the Judge Advocate General who are members of the bar of a Federal court or of the highest court of any State, or, in foreign countries, who are authorized to practice law in the courts of the country concerned, are legal assistance officers. While performing legal assistance duties, legal assistance officers shall be guided by the Canons, Ethical Considerations, and Disciplinary Rules of the Code of Professional Responsibility of the American Bar Association and the Canons of Professional Ethics and supplemental Federal Ethical Considerations of the Federal Bar Association. Persons who are authorized to practice law in the courts of a foreign country shall be guided by similar standards which have been promulgated for the guidance of lawyers in the country concerned.

1904 LEGAL ASSISTANCE OFFICES

a. *Establishment of offices.* A legal assistance office shall be established at each Navy Legal Service Office and at each Marine Corps command exercising general court-martial jurisdiction. In addition, any commanding officer having a legal assistance officer attached, assigned, or available to his command may establish a legal assistance office. The legal assistance office shall be disestablished when no person qualified to perform legal assistance duties is attached, assigned, or available to the command. Whenever a legal assistance office is established or disestablished, the Judge Advocate General shall be notified.

b. *Location*. Each legal assistance office should be conveniently located so as to be easily accessible to all persons eligible for legal assistance, and should be provided with facilities which will enable private consultation with legal assistance clients. Information as to the location and hours of the legal assistance office and the nature of the services available shall be published periodically in local directives and posted in appropriate conspicuous places.

c. *Legal assistance reference material*. The Judge Advocate General will, from time to time, furnish directly to legal assistance offices such professional information, reference material, and procedural suggestions and recommendations as he may deem advisable to enable legal assistance officers to render legal assistance services. Reference materials and publications so furnished are the property of the Office of the Judge Advocate General and shall remain in the legal assistance office and be carefully preserved. If the legal assistance office is disestablished, all such material shall be returned to the Judge Advocate General.

d. *Action to be taken by commands not having a legal assistance office*. All commands shall maintain in a convenient location, and publish from time to time, a current list of the legal assistance offices serving the command and a list of local civilian lawyer-referral committees or services.

1905 PERSONS ELIGIBLE FOR ASSISTANCE

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. The service is intended primarily for the benefit of personnel during active service, but is to be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the United States Armed Forces, and their dependents, when and if the workload of the office renders such service feasible.

1906 FUNCTIONS OF LEGAL ASSISTANCE OFFICERS

a. *Basic duties*. A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him:

(1) Shall counsel, advise, and assist persons eligible for assistance in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in section 1909.

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings.

(3) Shall, in appropriate cases and under guidelines contained in Appendix 19-a-(1) serve as advocate and counsel for, and provide full legal representation including representation in court to, persons eligible for assistance in connection with their personal legal problems.

(4) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(5) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and SECNAV Instruction 5350.5 series.

b. *Nature of assistance*. Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

c. *Duty to client*. A legal assistance officer should exercise his independent professional judgement on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this Chapter.

d. *Professional legal advice.* Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under Canon 3 of the Code of Professional Responsibility of the American Bar Association and particularly EC 3-2, 3-5, 3-6, and DR 3-101 (A).

1907 LIMITATIONS ON SERVICE PROVIDED

a. *Assistance in official military matters.* Legal assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a serviceman accused or suspected of an offense or of conduct leading to administrative proceedings will request advice from the legal assistance officer. In such a case, he should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for a respondent, or counsel for a party.

b. *Domestic-relations cases*. In domestic-relations cases, a legal assistance officer may, with the knowledge and consent of both parties, and where neither party is represented by counsel, consult both parties without impropriety.

c. *Nonlegal advice*. The legal assistance officer, while giving legal advice, may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

d. *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the interests of the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. §203, and 18 U.S.C. §205.

e. *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone.

1908 CONFIDENTIAL AND PRIVILEGED CHARACTER OF SERVICE PROVIDED

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in Canon 4 of the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by section 1913. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. While case files are not subject to the control of the Department of the Navy and therefore do not constitute a "system of records" within the meaning of the Privacy Act of 1974 (5 U.S.C. § 552a), no information which identifies an individual legal assistance client by name or any other particular, such as social security number, shall be extracted from the case files and incorporated into any file or index system aside from or in addition to the information contained on the legal assistance form (NAVJAG 5801/9) or locally used equivalent. Strict adherence to the foregoing will ensure compliance with the Privacy Act. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

1909 REFERRALS TO CIVILIAN LAWYERS

a. *General.* If it is determined that the legal assistance requested is beyond the scope of this Chapter, or if no available legal assistance officer is qualified to give the assistance requested, the client should be referred to a civilian lawyer. When the client does not know of a lawyer whom he wishes to represent him, his case may be referred to an appropriate bar organization, lawyer referral service, legal aid society, or other local organization for assistance in obtaining reliable, competent and sympathetic counsel, or to a civilian lawyer designated by such organization.

b. *Fees charged by civilian lawyers.* Legal assistance clients being referred to a civilian lawyer should be advised that, even when the fee to be charged is set by statute or subject to court approval, it should be one of the first items discussed to avoid later misunderstandings and eliminate uncertainty. Legal assistance officers should exercise caution in discussing possible fees to be charged by civilian lawyers so as to avoid embarrassment or misunderstanding between the client and his civilian lawyer.

1910 FEES, COMPENSATION, SOLICATION, AND REPRESENTATION IN CIVILIAN COURTS

a. *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this Chapter whether or not the service rendered is normally provided or available to such person under this Chapter and whether or not the service is rendered during duty hours as a part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this Chapter with respect to matters about which they consulted or advised said person in an official capacity. The prohibition may be waived only by the Judge Advocate General of the Navy or the Director, Naval Legal Service, as appropriate, in extraordinary circumstances on a case by case basis for inactive duty Reserve judge advocates who consulted with or advised an eligible client in an official capacity. Before a waiver may be granted, the following criteria, as well as other relevant criteria, shall be considered: (1) whether the waiver is specifically requested by the party concerned or an appropriate representative, (2) whether there is a likelihood that undue and substantial prejudice will otherwise be suffered by the party concerned, (3) whether adequate continued representation for compensation is otherwise reasonably available, and (4) whether the requested representation will violate the Code of Professional Responsibility of the American Bar Association or other applicable legal or ethical requirements.

b. *Solicitation.* Active duty military personnel, civilian employees of the Navy and Marine Corps, and inactive reservists, acting in an official capacity, are prohibited from soliciting, or advising that any person entitled to legal assistance under this Chapter retain, consult, or seek legal services from themselves in their private capacities, or from any attorney who is a partner or associate of a law firm of which they are partners or associates, or from any attorney with whom they share office spaces; *provided* that nothing herein shall prevent such person from being referred to civilian counsel as provided in section 1909 of this Chapter.

c. *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in section 1906a(3) and appendix A-19-2(1), before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, or the Director, Naval Legal Service, as appropriate. Requests for such permission may be in the form prescribed in section 1360b.

1911 SUPERVISION

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, officers in charge of naval legal service offices and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall ensure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the

American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

1912 COMMUNICATIONS

a. Legal assistance officers are authorized to communicate directly with the Judge Advocate General, with each other, and with other appropriate organizations and persons concerning legal assistance matters.

b. The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in DOD Instruction 5330.2 of 12 July 1968. A sample of the letter-head to be used is:

Legal Assistance Office
Building 200, Washington Navy Yard
Washington, DC 20374

Tel: (202) 433-4331

Naval legal service offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply U.S. Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in section 1908 of this manual.

1913 REPORTS

Effective 1 January 1979 each legal assistance office shall, by the 10th day of October of each year, prepare and submit to the Judge Advocate General (Code 63) one copy of the Legal Assistance Report (NAVJAG 5801/3 (Rev. 12-78)) covering the preceding fiscal year. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in paragraph 1911. Reports symbol JAG 5801-1 is assigned for this reporting requirement.

1914 FILES AND RECORDS

a. *Case files.* The material contained in legal assistance case files is necessarily limited to private unofficial matters and such material is privileged and protected under the attorney-client relationship. Each legal assistance office should therefore maintain only such files as are necessary for the proper operation of the office.

b. *Office records.* Each legal assistance office should maintain whatever records are necessary for the preparation of required reports. The Legal Assistance Case Record (NAVJAG 5801/9 (Rev. 5-71)) provides for the recording of the information required for the annual report, and the use of this form to record each individual legal assistance case is recommended.

1915 LIBERAL CONSTRUCTION OF CHAPTER

The provisions of this Chapter are intended to be liberally construed to aid in accomplishing the mission of legal assistance.

Chapter XX

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PART A–GENERAL PROVISIONS FOR CLAIMS

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a. The Judge Advocate General is responsible for administration and supervision, worldwide, of claims arising under the Federal Tort Claims Act (Part B of this chapter), the Military Claims Act (Part C of this chapter), the Nonscope Claims Act (Part D of this chapter), the Personnel Claims Act (Chapter XXI), the Foreign Claims Act (Chapter XXII), the Act of 7 September 1962 (section 2227 of this manual), the Medical Care Recovery Act (Part A of Chapter XXIV), and the Federal Claims Collection Act of 1966 (Part B of Chapter XXIV).

b. Part A delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this chapter. Where the general provisions of Part A conflict with the specific provisions of any subsequent part of this chapter, the specific provisions govern.

2002 INVESTIGATION: IN GENERAL

Every incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to ensure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of claims against and in favor of the Government and for all other official action required by the circumstances of the case. Claims against persons in the naval service arising from the performance of official duties shall be investigated and processed as claims against the United States.

2003 INVESTIGATION: REQUIREMENTS

a. *When required.* Investigations are required whenever a claim against the Navy is filed or is likely to be filed, or when a claim in favor of the Navy is possible. The Navy must have the background information and data to process all claims and to defend all suits which are commenced before the running of the statute of limitations. Accordingly, even when recovery may be barred by statute or decisional law, all deaths, serious injuries, and substantial losses to or destruction of property must be investigated promptly while the evidence is available. When a claim may be barred, as by one of the exclusions enumerated in sections 2036c, d, 2055d, or 2065b, the investigative report must document the factual basis for the exclusion.

b. *Immediate reports.* An immediate letter report shall be made to the Judge Advocate General, with copies to the Director, Torts Branch, Civil Division, Department of Justice, Washington, D.C. 20530, and the appropriate reviewing authority listed in section 2080 in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims;

(2) Upon filing of a claim which could develop litigation which would involve a new precedent or point of law (see section 2053c(2));

(3) Claims or possible claims which involve or are likely to involve another agency besides the Department of the Navy.

c. *Investigation without delay.* Incidents falling within any of the categories listed in subsection a of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

d. *Opening claim file and disclosure of personal information.* When an investigation is commenced or a claim is filed, whichever occurs first, a claim file should be opened by the naval activity most directly involved. Because this file will probably contain personal information solicited from the claimant or witnesses, all such files must bear a cover-sheet for recording and accounting for disclosures of information from the file about identifiable individuals. Appendix A-3-a is a suggested format for this purpose. Disclosure of personal information from the claim file is governed by the Privacy Act of 1974 (5 U.S.C. § 552a) and SECNAVINST 5211.5 series. It is important to note that unauthorized disclosure of such information could subject the discloser to criminal penalties.

e. *Additional requirements under other regulations.* This chapter in no way modifies the requirements of U.S. Navy Regulations, the Manual for

Courts-Martial, or other provisions of the Manual of the Judge Advocate General, and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of this Manual. Report Control Symbol JAG 5890-12 is assigned to this report.

2004 INVESTIGATION: RESPONSIBILITY FOR

a. *Immediate responsibility.* Responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of the personnel involved or of the activity in which the incident occurred. Where two or more activities are involved, see section 0207. If a nonnaval activity is concerned, see section 2003b(3). Such nonnaval activity should be promptly notified of the incident.

b. *Assistance.* When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter should comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating installation or unit.

c. *Report of Motor Vehicle Accident, Standard Form 91.* RCS OPNAV 5100-6. The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form 91. This driver's report shall be made even though the driver of the other vehicle, or any other person involved, states that no claim will be filed, and even though the only vehicles involved are Government owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

2005 THE INVESTIGATING OFFICER: IN GENERAL

Every investigation required by these regulations shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and with experience in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all and the same powers as the investigating officer, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To ensure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an individual in his capacity as an investigating officer shall ordinarily have priority over any other assignments he may have.

2006 THE INVESTIGATING OFFICER: DUTIES

It shall be the duty of the investigating officer, in making an investigation pursuant to these regulations:

a. To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

b. To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.

c. To secure and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests. To ensure compliance with the Privacy Act of 1974 (5 U.S.C. § 552a) with regard to interviewing witnesses, see section 0308 and Appendix A-3-a.

d. To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason therefor.

e. To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For the proper method of computing the amount of damages, see section 2014.

(1) *Loss of earnings.* Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public or, where the claimant is in business for himself, a certified copy of company records showing claimant's age, occupation, wage or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained.

(2) *Medical information to be supplied by claimant.* Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Aot require submission by the claimant of a written statement by the attending physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

f. To obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident in all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability.

g. To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed.

(1) *Medical examination at a military installation.* The investigating officer, if the injured person does not object, should have a physical examination of the injured person conducted at a military installation. Consideration should be given to the availability of personnel and facilities of the installation. Expenses for services or supplies from other Federal agencies or civilian agencies should not be incurred. A copy of the report of the physical examination obtained from the medical installation shall be included in the report of investigation or, if made subsequent to the forwarding of that report, forwarded to the same addressee as the report of investigation.

(2) *Navy expert opinion.* In appropriate cases, a Navy-employed expert may be asked to evaluate the extent of damage. Anyone possessing special knowledge or experience, such as a public-works estimator, may qualify. Any costs involved in obtaining the expert opinion shall be absorbed by the command to which the expert is attached.

(3) *Government experts from other than Navy sources.* On occasion, expert opinion is available from other departments and agencies of the Government. Arrangements for this service, when available, may be made locally. Any expense involved will be absorbed by the command conducting the investigation.

(4) *Civilian experts.* Occasionally, such as when accurate real-estate appraisals cannot be obtained from public-works or Federal Housing Administration personnel, civilian experts must be employed in order to protect the Government's interest. Whenever a Navy-funded civilian expert is considered necessary, the cost will be absorbed by the command conducting the investigation. Medical experts may be

employed only with the permission of the Chief, Bureau of Medicine and Surgery, and a request for such permission will normally be made only after a physical examination has been conducted in accordance with paragraph (1) above.

h. To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception for claims under $600 as set forth in section 2007b.

i. To furnish the proper claim forms to any person who inquires concerning the procedure for making a claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim, or, if a claim has been filed, to see that the information required by section 2013 has been submitted by the claimant.

j. To submit the complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit. In a case where not all of the information required by section 2007 is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report containing all available information shall be submitted promptly. It shall then be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

2007 THE INVESTIGATIVE REPORT: CONTENTS

A written report of investigation will be made in each case using standard forms whenever appropriate.

a. *Pertinent data.* Except in cases falling within the provisions of subsection b of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.

(4) A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part-owners, and the basis of the claimant's alleged right to file a claim.

(5) Names, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses. Regardless of whether an individual is a naval member or employee, he should not be requested to provide his social security number in connection with the investigation. This will obviate the need for giving the individual a social security number statement under the Privacy Act (5 U.S.C. § 552a). If necessary in a particular investigation, the number can generally be obtained from other available records.

(6) Names and addresses of witnesses.

(7) The Privacy Act statement for each party or witness who was asked to furnish personal information about himself after 26 September 1975. Noncompliance with this requirement should be explained in the preliminary statement to the investigative report and, when required, remedied in accordance with section 0308.

(8) A recommendation as to whether or not military personnel and civilian employees involved were acting in the line of duty, or scope of their employment, as defined in section 2031b. The report shall contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.

(9) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(10) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(11) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, address, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(12) If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(13) A statement as to whether any person involved violated any state or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(14) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(15) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(16) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractural agreement to indemnify the Government.

(17) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under section 2006 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure. Report control Symbol JAG 5890-4 is assigned to this report.

b. *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by section 2006 and the detailed report described in subsection a above, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Part B of this chapter) or the Military Claims Act (Part C of this chapter); and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in Appendix A-20-c. Report Control Symbol JAG 5890-14 is assigned to this report.

2008 THE INVESTIGATIVE REPORT: ACTION BY THE COMMANDING OFFICER OR OFFICER IN CHARGE

a. *Action.* If a claim is likely to arise, the investigative report shall be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if practicable, in endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in subsection 2007b is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing that report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request.

b. *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention: Commanding Officer of the appropriate Naval legal service office, or the cognizant staff judge advocate." When there is doubt as to the appropriate adjudicating authority, the reports may be forwarded through the proper chain of command to the Judge Advocate General.

2009 THE INVESTIGATIVE REPORT: ACTION BY REVIEWING AUTHORITY

a. *Return or endorsement.* A reviewing authority may return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, it shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

b. *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. § 552a) and SECNAVINST 5211.5 series. Any indication of noncompliance shall be explained either in the preliminary statement or the forwarding endorsements and, when required, remedied in accordance with section 0308. The appropriate officer listed in Appendix A-20-f has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

c. *When a claim has been filed.* If a claim has been filed, see section 2016. When a claim is received, all holders of the investigative report shall be notified.

2010 CLAIMS: IN GENERAL

a. *Claims against the United States.* Claims against the Government shall receive expeditious and just disposition throughout the entire course of processing. Sections 2011-2022 should generally be followed in such processing. All claims against the Government, to be deemed meritorious, must have a basis in a specific Congressional enactment. Accordingly, any claim should be viewed in light of that statute under which it might be considered, if at all, and the specific provisions of this manual concerning that statute should be consulted.

b. *Claims in favor of the United States.* See Chapter XXIV for the processing of claims in favor of the Government.

c. *Assistance to claimants.* Claimants or potential claimants who make inquiry concerning their rights or procedures to be followed in the filing of claims shall be referred to a Navy claims officer. It shall be an official duty of the claims officer to: (1) provide such persons with the proper claims forms, (2) advise where the claims forms should be submitted, (3) advise what, if any, substantiating evidence will be required to be filed with the claims forms, and (4) advise generally concerning the requirements of section 2013. A Federal official must be careful not to violate 18 U.S. C. §205, which makes it a crime for any officer or employee of the United States to act as an agent or attorney in the prosecution of any claim against the United States. See section 1907d concerning requests for legal assistance in connection with claims against the United States.

2011 CLAIMS: A PROPER CLAIMANT

a. *Damage to property cases.* A claim for damage to, or loss or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary or legal representative.

b. *Personal injury or death cases.* A claim on account of personal injury shall be presented by the

person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

c. *Subrogation.* A subrogor and a subrogee may file a claim jointly or may file separate claims. Except as provided in section 2040-14.6(a), when separate claims are filed and each claim, individually, is within local authority, they may be processed locally, when appropriate, even if the aggregate of such claims exceeds the monetary jurisdiction of the approving or settlement authority. When one claim cannot be settled, the provisions of section 2016c-d apply. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

d. *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 USC §203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

2012 CLAIMS: PRESENTMENT OF

a. *Standard Form 95.* A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim, in a sum certain, and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95, (see Appendix A-20-a) shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signatures of the claimant or his agent shall be identical throughout. When more than one person has a claim arising from a single incident, each person should file his claim separately and individually. A subrogor and a subrogee may file a claim jointly or separately. Only one claim, combining damage to property and personal injury or death, may be submitted by a claimant.

b. *To whom submitted.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, 200 Stovall St., Alexandria, Virginia 22332. *See* section 2040-14.2.

2013 CLAIMS: CONTENTS OF

a. *Information to be submitted.* The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant;

(2) The amount claimed for property damage, loss, or destruction, and the amount claimed on account of personal injury or death;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The persons, vehicles, and other property involved;

(5) The identity of the Government department, agency, or activity involved;

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it;

(7) The nature and extent of the resulting damage, loss, destruction, or injury;

(8) The names and addresses of any witnesses to the incident; and

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

b. *Privacy Act advice.* When any person making a claim for damage or injury is requested by a person acting on the Government's behalf to supply personal information which will be made a part of the claim file, the person making the request shall first provide the individual a Privacy Act statement in duplicate containing the particular advice prescribed in SECNAVINST 5211.5 series, in accordance with section 0308. The Standard Form 95 which was issued in 1978 contains a Privacy Act Statement (*See* Appendix A-20-a(1)). Otherwise, the original is to be signed by the claimant and made a part of the claim file, and the copy should be retained by the claimant. If the information from the claimant is requested orally, the Privacy Act statement should be orally summarized and explained as necessary to ensure that the claimant fully understands it.

c. *Amount of the claim.* The amount of the claim shall be stated in a sum certain and shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid, or, in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit: a written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. In support of claims for lost earnings, the additional information delineated in section 2006e(1) shall be submitted. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred. The claimant may also be required to provide additional information including: his date and place of birth; the names and ages of parents and grandparents, and, if any be dead, the age at and cause of death; the names and ages of brothers and sisters, serious illnesses suffered by any of them, and, if any be dead, the age at and cause of death; the date and place of all marriages, and the names and ages of all children; the dates of, places at and reasons for hospitalization or physician's care in the preceding 10 years, as well as the names and addresses of all hospitals and attending physicians; the extent of use of alcohol and tobacco products; musical or artistic skills, remarkable mechanical skills, recreational activities, and membership in social and religious organizations; the names and addresses of all employers in the preceding 10 years and the nature of the work performed for each; and the value of any interest in real estate, jewelry, stocks and bonds, savings and checking accounts, vehicles, boats, furniture, life insurance policies, annuities and other investments. The claimant may be required to provide copies of Federal, state, and local tax returns for the preceding 10 years and in a wrongful death case copies of the will, estate tax return, inventory, and preliminary or final accounting.

d. *Brief.* The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

2014 CLAIMS: THE SCOPE OF LIABILITY AND THE MEASURE OF DAMAGES

No claim can be paid unless a determination is made that the facts alleged and the conduct complained of by the claimant are facts and conduct for which the Government has agreed to stand responsible in money damages under a particular claims statute. Accordingly, the specific provisions of the subsequent parts of this chapter regarding "Scope of Liability" should be considered (see sections 2036, 2055, and 2065). Similarly, the specific provisions of this chapter concerning "Measure of Damages" should be utilized in valuing the quantum of liability (see sections 2037, 2056, and 2065).

2015 CLAIMS: ACTION BY RECEIVING OFFICER OR COMMAND

a. *Record date of receipt.* The first command receiving the claim shall stamp or mark the date of receipt upon the letter of claim or claim form.

b. *Determine military activity involved.* The receiving command should determine the local naval activity most directly concerned, normally the commanding officer or the officer in charge of the personnel involved or of the activity in which the incident occurred. If a nonnaval activity is or may be the activity most directly involved, see section 2003b(3) and subsection d of this section.

c. *When the receiving command is the activity most directly involved.* An immediate investigation in accordance with sections 2002-2007 should be commenced. If an investigation has already been completed, an evaluation of such investigation in light of the claim should be conducted with a view to correcting or supplementing the investigation. In addition, the receiving command shall notify all holders of the investigation that a claim has been filed. The original claim and the investigation or any reevaluation thereof should then be forwarded as directed by section 2008.

d. *When the receiving command is not the activity most directly involved.* If an activity other than the receiving command is the activity most directly involved, the original claim should be forwarded to that activity.

2016 CLAIMS: ACTION BY ADJUDICATING AUTHORITY

a. *Review prior action.* The adjudicating authority is ultimately responsible for determining that an adequate and complete investigation in accordance with sections 2002-2007 has been conducted, that the date of initial receipt of the claim is recorded on the face of the claim, and that all holders of the investigation, if completed, have been notified of the claim.

b. *Determine sufficiency of claim.* A determination of the sufficiency of a claim under sections 2011-12 should be made. If the claim is deemed insufficient, it should be returned to the submitting party together with an explanation of the insufficiency. Such action by the adjudicating authority does not constitute denial of the claim.

c. *Adjudication of claims.*

(1) *Claims within the adjudicating authority.* Except as provided in section 2035c concerning multiple claims, the appropriate adjudicating authority shall approve or disapprove the claims within his adjudicating authority as described in section 2080. In unusual cases, the entire record, together with the information required by subsection d of this section, may be referred to the Judge Advocate General for appropriate action.

(2) *Claims in excess of the adjudicating authority.* All claims, regardless of the amount involved, should be negotiated for settlement within local adjudicating authority if such settlement is appropriate and possible. Permission of higher command is not necessary. Negotiation beyond local adjudicating authority may be attempted, if appropriate, provided claimant is clearly informed that the final decision on his claim will be made by a higher command.

d. *Forwarding a claim to the Judge Advocate General.* In the event a claim cannot be approved, settled, compromised, or denied within the adjudicating authority granted by this chapter, such claim should be forwarded promptly to the Judge Advocate General with the following materials:

(1) An official endorsement or letter of transmittal;

(2) A memorandum of law containing an analysis of the facts, a review of the applicable law, an evaluation of liability, and a recommendation as to the settlement value of the claim;

(3) The original of the investigative report together with all enclosures and allied papers; and

(4) The original claim and all copies thereof filed by the claimant. The adjudicating authority shall retain at least one copy of all materials transmitted to the Judge Advocate General under this subsection.

e. *Litigation reports*

(1) A litigation report is a letter addressed to the Department of Justice or the U.S. Attorney, as appropriate, containing a narrative summary of the pertinent facts upon which the lawsuit is based. Al-

though most litigation reports originate from the Claims Division of the Office of the Judge Advocate General, the Judge Advocate General will normally request that the cognizant commanding officer, naval legal service office, or staff judge advocate provide a litigation report when suit is filed by a claimant and the claim has not yet been forwarded to the Judge Advocate General by the adjudicating authority in accordance with section 2016d and in other cases when considered appropriate. The litigation report should be sent directly to the cognizant United States Attorney unless otherwise directed, with copies of the report and all enclosures forwarded to the Department of Justice and the Judge Advocate General.

(2) Section 1331b.(1) provides that requests for release of JAG Manual Investigations, including enclosures, outside of the Department of the Navy, shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination. The only exception to this rule is in the case of affirmative claims files. See section 1331 for further information.

2017 CLAIMS: PAYMENT OF

Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. See section 2040-14.10(a) regarding the payment of Federal tort claims in excess of $2,500 by the General Accounting Office and Appendix page 20-d.

2018 CLAIMS: SETTLEMENT AGREEMENT AND RELEASE

a. *Difference between fully and partially approved claims.* In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury (Standard Form 95), is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated *in writing* his willingness to accept such amount in full satisfaction and final settlement of the claim. Sample settlement agreement are contained in A-20-b(1) and A-20-b(2).

b. *Release.* Except for an advance payment pursuant to section 2071, the acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees pursuant to the authority granted by statute and these regulations, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant. Acceptance constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, or the civil action provisions of 28 USC 1346(b) and Part B of this chapter also constitutes a complete release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

2019 CLAIMS: DISPOSITION OR DENIAL OF

a. *Claimant to be notified.* In every case the approving or disapproving authority shall notify, promptly and in writing, the claimant of the action taken on his claim.

b. *Final Denial.* A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail with return receipt requested. The notification of denial may include a statement of the reason or reasons for denial. Such notification shall include a statement that if the claimant is dissatisfied with the action taken on his claim he may:

(1) If the claim is cognizable under the Federal Tort Claims Act, within 6 months of the date of such notification, file suit in the appropriate United States District Court.

(2) If the claim is cognizable under the Military Claims Act, within 30 days after receipt of such notification, appeal to the Secretary of the Navy stating the grounds relied upon for such appeal. The notice of denial shall inform the claimant that suit or appeal pursuant to one statute will not toll the time limitation set forth above for the other.

2020 CLAIMS: AMENDMENT, APPEAL, OR RECONSIDERATION OF

a. *Amendment.* At any time prior to denial, or prior to action by the claimant exercising his option to deem a claim denied, a claim submitted pursuant to the Federal Tort Claims Act may be amended. See sections 2034e and 2040-14.2(b).

b. *Appeal or reconsideration.*

(1) In connection with the denial of any claim within the scope of the Federal Tort Claims Act (Part B of this chapter), the claimant may, in writing and provided such writing is received by the authority who denied the claim not later than 6 months after the date of denial, appeal or request reconsideration of his claim. See sections 2034i and 2040-14.9(b). Such appeal or request must state the reasons therefor. An appeal or request filed solely to extend the statutory period for filing suit shall be void.

(2) In connection with the denial of any claim within the scope of the Military Claims Act (Part C of this chapter), or not cognizable under any other provision of law (Part D of this chapter), the claimant may, in writing and provided such writing is received by the proper authority under section 2053h or 2053c not later than 30 days after the date of denial, appeal or request reconsideration of his claim. Such appeal or request shall state the reasons therefor.

c. *Disposition of appeal or reconsideration.* Upon receipt of a written appeal or request for reconsideration, such appeal or request shall be promptly considered by the appropriate adjudicating authority. Final disposition shall be in writing as prescribed by section 2019.

2021 CLAIMS: ACTION REQUIRED UPON NOTICE OF SUIT

a. *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of 28 USC 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commanding officer of the appropriate naval legal service office who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or omission committed within the scope of his employment which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner. See sections 2002 and 1320c.

b. *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 USC 1346(b), a request shall be made to the commanding officer of the appropriate naval legal service office for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed.

c. *Adjudicating authority.* A request for an investigative report shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed. In addition, the commanding officer of the appropriate naval legal service office shall determine if an administrative claim has been filed, and, if records show no claim to have been received, the Judge Advocate General, the Department of Justice, and the United States Attorney shall be promptly notified of this fact.

d. *Litigation reports.* See section 2016e.

2022 CLAIMS: FINALITY

Subject to the provisions of 28 U.S.C. §1346(b) and section 2034i respecting civil action against the United States and administrative reconsideration of Federal Tort Claims Act denials, and subject to the provisions of section 2053h regarding appeal of Military Claims Act denials, any award or determination by the Secretary of the Navy or his designees is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy, or by his designees, under the authority of the Military Claims Act is final and conclusive for all purposes.

2023 DISCLOSURE OF INFORMATION

Release of information from official naval records, including *JAG Manual* and claims investigations and claims files shall be governed by SECNAVINST 5211.5 series and SECNAVINST 5720.42 series, respectively. To determine which instruction governs a particular demand or request for information, see section 1331. It is noted that, when requests for copies of *JAG Manual* Investigations are processed under SECNAVINST 5720.42 series, endorsements, findings of fact, opinions, recommendations, and other intra- and inter-agency advisory communications which become part of these investigations frequently may be withheld from public disclosure as exempt under exemption 5 of the Freedom of Information Act [5 U.S.C. §552(b)(5)] when the withholding will serve a significant and legitimate governmental purpose. Similarly, the release of portions of information from personnel and medical records and similar files may be determined, in some cases, to constitute a clearly unwarranted invasion of personal privacy, thus justifying the withholding of that information under exemption 6 of the Freedom of Information Act [5 U.S.C. §552(b)(6)]. The fact that particular information could provide the basis of a claim against the United States, or the fact that particular information would invade an individual's privacy in an unwarranted manner, might constitute a significant and legitimate governmental purpose for invoking a statutory exemption, if available, to deny a request for release under the Freedom of Information Act. For recording disclosures of information from "systems of records" as defined by the Privacy Act (5 U.S.C. §552a), see section 0308 and Appendix A-3-b(1). For a broader statement concerning the production of information from official naval records, whether in response to a court order or in the absence of a court order, see part C of chapter XIII.

2024 SINGLE-SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS

a. *Applicable law.* Department of Defense Directive 5515.8 series (NOTAL) has assigned single-service responsibility for the processing of claims under the following laws:

(1) Foreign Claims Act [10 U.S.C. §2734 (*see* chapter XXII of this Manual)];

(2) Military Claims Act [10 U.S.C. §2733 (*see* Part C of this chapter)];

(3) Act of 7 September 1962 (10 U.S.C. §§2734a and 2734b), pro-rata cost sharing of claims pursuant to international agreement (*see* section 2227 of this Manual);

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements (*see* sections 2073 and 2227 of this Manual);

(5) Act of 25 September 1962 (42 U.S.C. §§2651-2653) claims for reimbursement for medical care furnished by the United States (*see* chapter XXIV of this Manual);

(6) Act of 9 October 1962 (10 U.S.C. §2737), claims not cognizable under any other provisions of law (*see* Part D of this chapter);

(7) The Federal Claims Collection Act of 1966 (31 U.S.C. §§951-953); the Act of June 1921 (31 U.S.C. §71), claims and demands by the Government of the United States; and

(8) Act of 8 September 1961 (10 U.S.C. §2736), advance or emergency payments (*see* Part E of this chapter).

b. *List of countries.* Responsibility for the processing of all claims in favor of the United States cognizable under a(4), (5), or (7) above, or against the United States cognizable under a(1) through (4), (6), or (8) above, which arise in the following countries is assigned to the military departments listed below:

(1) Department of the Army: Belgium, France, the Federal Republic of Germany, Iran, Korea, Liberia, Mali, Senegal, Republic of Zaire, and as the Receiving State Office in the United States under a(3) and (4).

(2) Department of the Navy: Ethiopia, Iceland, Italy, and Portugal.

(3) Department of the Air Force: Australia, Canada, Denmark, Egypt, Greece, Greenland, India, Japan, Nepal, Luxembourg, Netherlands, Norway, Oman, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

c. *U.S. forces afloat cases under $500.* Notwithstanding the provisions of subsection b above, the Department of the Navy is authorized to settle claims under $500 caused by Navy personnel not acting within scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreements described in a(4) above concerning the processing of nonscope of duty claims by receiving and sending state authorities.

d. *Assignment of responsibility of a unified command.* On an interim basis and while awaiting confirmation and approval from the Office of the Secretary of Defense, a Unified Command may, when necessary to implement contingency plans, assign single-service responsibility for the processing of claims in countries where such assignment has not already been made.

2025-
2029 RESERVED

PART B–FEDERAL TORT CLAIMS ACT

2030 SCOPE OF PART B

The regulations of Part B apply exclusively to the administrative processing and consideration of claims against the United States arising under the Federal Tort Claims Act (28 U.S.C. §§1346(b), 2671-2680). The regulations of the Attorney General of the United States concerning administrative claims under the Federal Tort Claims Act (28 CFR Part 14) are presented in section 2040 of this chapter and are expressly incorporated into the regulations of the Judge Advocate General. In cases of conflict between provisions of sections 2030-2039 and the provisions of section 2040, the provisions of section 2040 prevail for Federal Tort Claims Act claims.

2031 DEFINITIONS

a. *Employees of the Government.* The term "employee of the Government," as used in this chapter, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, with or without compensation. Contractors with the United States are not Federal agencies, and their employees are not "employees of the Government," even if the contractor is operating a Government-owned plant. Status as an "employee of the Government" is a Federal question to be determined by Federal law.

b. *Scope of employment and line of duty.* "Acting in the scope of employment" and "acting in the line of duty" are synonymous for purposes of the Federal Tort Claims Act, and the meaning is determined in accordance with principles of respondeat superior under the state law of the jurisdiction in which the act or omission occurred.

2032 STATUTORY AUTHORITY

a. *Waiver of sovereign immunity.* Subject to the provisions of 28 U.S.C. §§2671-80 Federal Tort Claims Act Procedure, the United States district courts including the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, have exclusive jurisdiction of civil actions on claims against the United States for money damages for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred [28 U.S.C. §1346(b)].

b. *Setoff, etc., encompassed.* The jurisdiction described in subsection a includes jurisdiction of any setoff, counterclaim, or other claim or demand on the part of the United States [28 U.S.C. § 1346(c)].

c. *Venue.* Any civil action on a tort claim against the United States under 28 U.S.C. § 1346(b) may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred (28 USC §1402(b)).

d. *Jury trial.* Any action against the United States under 28 USC §1346(b) shall be tried without a jury (28 USC §2402).

e. *Exclusive character of remedies.*

(1) *Action against the United States.* The remedies provided by 28 USC §1346(b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 USC §1346(b); 28 USC §2679(a)).

(2) *Action against the individual employee.* In most cases, the employee of the Government whose conduct gives rise to a civil action against the United States under 28 USC §1346(b) is immune from suit brought against him personally. In cases not covered by the Federal Driver's Act (28 USC §2679(b)), the immunity arises from case law (*Barr v. Matteo*, 360 U.S. 564 (1959); *Bates v. Carlow*, 430 F.2d 1331 (10th Cir. 1970)), and the immunity must be pleaded and proved (*Willingham v. Morgan*, 424 F.2d 200 (10th Cir. 1970)). Since it is possible, notwithstanding the statute and cases cited above, that a Government employee may be held personally liable for damages caused by his negligent performance of official duties, and he may be responsible for paying a judgment where the United States is not named as codefendant, the Government employee should be advised to seek appropriate legal advice in each case. *See* section 1320c.

2033 ADMINISTRATIVE CLAIM AND CONSIDERATION AS A PREREQUISITE TO SUIT

a. No action may be maintained against the United States under 28 USC §1346(b) unless the claimant has first properly filed an administrative claim and that claim has been finally denied. See sections 2034b and 2034h for what constitutes a proper filing and a final denial of a claim. The failure of the Navy to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim, or counterclaim (28 USC §2675(a)).

b. No action may be instituted for an amount in excess of the amount of the administrative claim unless the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of the filing of the claim, or upon allegation and proof of intervening facts relating to the amount of the claim (28 USC §2675(b)). See section 2034(e) regarding the amendment of an administrative claim.

2034 THE ADMINISTRATIVE CLAIM

a. *Proper claimant*

(1) *Property.* A claim for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative.

(2) *Personal injury.* A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) *Death.* A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally entitled to do so in accordance with local law governing the rights of survivors.

(4) *Loss compensated by insurer.* A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer

with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(5) *Claim presented by agent or legal representative.* A claim presented by an agent or legal representative will be presented in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

b. *Proper claim and presentation.* A claim shall be deemed to have been presented when the Navy receives from a claimant an executed Standard Form 95 or written notification of an incident, together with a claim for money damages in a sum certain. See Appendix A-20-a for a sample form. A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency. For purposes of the 6-months provision of section 2033a above, a claim shall be deemed to have been filed when it is received by the appropriate Federal agency. See section 2033b(3) for the reporting of claims within the purview of both the Navy and another Federal agency.

c. *Evidence and information in support of the claim.* The claimant may be required to furnish any evidence which may have a bearing on either the responsibility of the United States for the death, personal injury, or injury to or loss of property, or the damages claimed (28 CFR 14.4). See sections 2013 and 2040-14.4 for the specific evidence and information that may be required. Failure of the claimant to provide the required information upon request may result in no administrative consideration of the claim.

d. *Investigation and examination.* The claim shall be investigated in accordance with Part A. The Navy may request, or be requested by, any other Federal agency to investigate a claim filed under 28 USC §2672 or to conduct a physical examination of a claimant and to provide a report of the physical examination. See section 2040-14.8.

e. *Amendment of the claim.* A proper claim under subsection b of this section may be amended by the claimant at any time prior to a final disposition of the unamended claim by the Navy or prior to the exercise of the claimant's option under section 2033a and 28 USC §2675(a). An amendment shall be submitted in writing and shall be signed by the claimant or his duly authorized agent or legal representative. A proper amendment to a pending claim gives the Navy 6 months from the date of receipt of such an amendment to make a final disposition of the amended claim, and the claimant's option under section 2033a and 28 USC §2675(a) shall not accrue until 6 months after the filing of the amendment. Notwithstanding the above, no finally-denied claim for which reconsideration has been requested under subsection i may be amended.

f. *Payment of the claim.* Any award, compromise, or settlement in an amount of $2,500 or less shall be paid in accordance with section 2017. Payments in excess of $2,500 shall be paid in accordance with section 2040-14.10. The officer signing Standard Form 1145 as an authorized designee must include a statement over his signature citing his JAG Manual authority to sign. See Appendix A-20-d.

g. *Settlement agreement.* Sample settlement agreements including the required statement concerning fee limitations in Federal Tort Claims Act cases are contained in Appendices A-20-b(1) and A-20-b(2).

h. *Denial of the claim.* Final denial of an administrative claim shall be accomplished in accordance with sections 2019 and 2040-14.9(a).

i. *Reconsideration of the claim under the Federal Tort Claims Act.* Prior to the commencement of suit and prior to the expiration of the 6-month period after a final denial of a claim by the Navy, the claimant or his duly authorized agent or legal representative may file a written request with the Navy for reconsideration of the finally-denied Federal Tort Claims Act claim. The Navy shall have 6 months from the date of the filing of a proper request for reconsideration in which to make a final disposition of the request, and such final disposition shall be accomplished in accordance with section 2020c. Claimant's option under 2033a and 28 USC §2675(a) shall not accrue until 6 months after the filing of the request. A final denial of a request for reconsideration is not a final denial of a claim for purposes of the first sentence of this subsection, but is a final denial for purposes of sections 2033, 2034h, and 2038. Nothing in this subsection shall be construed to permit amendment of a finally-denied claim. A request for reconsideration filed solely for the purpose of extending the section 2038b statutory period for filing suit shall be void.

2035 ADMINISTRATIVE CONSIDERATION: WHO IS AUTHORIZED?

a. *Statutory authorization.* Pursuant to 28 USC §2672 of the Federal Tort Claims Act and in accordance with regulations issued by the Attorney General (see section 2040), the Secretary of the Navy or his designee, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for damages to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. See subsection c for limitations on the authority of the Secretary or his designee.

b. *Specific delegation and designation.* See section 2080.

c. *Limitations on authority.* Notwithstanding the provisions of subsections a and b:

(1) Any award, compromise, or settlement by the Navy under 28 USC §2672 in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee;

(2) An administrative claim presented under 28 USC §2672 may be approved, disapproved, compromised, or settled only after consultation with the Department of Justice by the Judge Advocate General when:

(a) A new precedent or a new point of law is involved;

(b) A question of policy is or may be involved;

(c) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third-party claim; or

(d) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of a related claim in which the amount to be paid may exceed $25,000; and

(3) An administrative claim presented under 28 USC §2672 may be adjusted, determined, approved or disapproved, compromised, or settled by the Judge Advocate General only after consultation with the Department of Justice when the United States or its employee agent or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(4) In all situations noted in paragraphs (2) and (3) of this subsection in which the approval, disapproval, compromise, or settlement of a claim would otherwise be within the authority of the person handling it, the claim, along with the entire file, shall be forwarded to the Judge Advocate General with a full statement of the reasons therefor. Such forwarding shall be in accordance with section 2016d.

2036 SCOPE OF LIABILITY

a. *In general.* Subject to the exceptions listed in subsections c and d, in adjudicating claims under section 2035, the liability of the United States is generally determined in accordance with the law of the place where the act or omission occurred (28 USC §2672). Where local law and applicable Federal law conflict, the latter prevails.

b. *Multistate torts.* In situations involving more than one jurisdiction, the liability of the United States under subsection a is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (*Richards v. United States*, 369 U.S. 1 (1962)).

c. *Claims not within the Act.* By virtue of 28 USC §2680, the provisions of the Federal Tort Claims Act do not apply to:

(1) Any claim based upon an act or omission of an employee of the Government exercising due care in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the

failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused;

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter; but see section 2055c for processing mail claims under the Military Claims Act;

(3) Any claim arising with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) Any claim for which a remedy is provided by the act of 9 March 1920, as amended (46 USC §§741-52), or the act of 3 March 1925 as amended (46 USC §§781-90) relating to claims or suits in admiralty against the United States. Claims arising under the Death on the High Seas Act (46 USC §761) are not excepted from the provisions of 28 USC §1346(b). Because they may involve both admiralty and torts procedure, however, claims under this Act will be referred to the Judge Advocate General for adjudication in all cases. By virtue of 28 USC §2680(d), admiralty claims arising from damage caused by a vessel in the naval service are processed in accordance with Chapter XII. Admiralty claims arising from other sources may be adjudicated under the Military Claims Act or the Foreign Claims Act, with the assistance of the Admiralty Division of the Office of the Judge Advocate General if appropriate.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended (50 USC App. §§1-44);

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States;

(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; provided, that, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of the Federal Tort Claims Act shall apply to any claim arising, on or after March 16, 1974, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this provision, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(8) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system;

(9) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;

(10) Any claim arising in a foreign country (*see* chapter XXII concerning Foreign Claims); and

(11) Any claim arising from the activities of the Tennessee Valley Authority, the Panama Canal Company, a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

d. *Additional claims not payable.* Although not expressly excepted from the application of the provisions governing administrative settlement of Federal tort claims, the following types of claims shall not be paid:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred incident to service or duty (*Feres v. United States,* 340 U.S. 135 (1950); *compare Brooks v. United States,* 337 U.S. 49 (1949));

(2) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 31 USC §§240-43 and the applicable Personnel Claims Regulations (*see* chapter XXI);

(3) Any claim for the personal injury or death of a Government employee to whom the Federal Employees' Compensation Act, as amended and reenacted (5 USC §§7901-03, 8101-93), is applicable (*see* 5 USC §8116c, specifically);

(4) Any claim for personal injury or death of a civilian employee of a nonappropriated-fund activity covered by the Longshoremen's and Harbor Workers' Compensation Act (*see* 33 USC §905 and 5 USC §8171);

(5) That portion of any claim attributable to the fault or negligence of a contractor of the Government, to the extent to which such contractor may be liable under the provisions of his contract (*see United States v. Seckinger*, 397 U.S. 203 (1969) and section 2007a(15)); and

(6) Any claim against the Navy by another Federal agency. Tort or tort-type claims for damage to the property of one Government department or agency normally are not asserted against another Government department or agency, regardless of whether a department or agency is fully supported from appropriated funds, is partly supported by revenue-producing activities, or is a Government corporation or a nonappropriated-fund activity (*see* 25 Comp. Gen. 49 (1945); 9 Comp. Gen. 263 (1930); 6 Comp. Gen. 171 (1926); 6 Comp. Dec. 74 (1899); *but see* 26 Comp. Gen. 235 (1946); 14 Comp. Gen. 256 (1934)). This interdepartmental waiver is predicated on the doctrine that property belonging to the Government is not owned by any department of the Government (*see* 22 Comp. Gen. 390 (1916)). The Government does not reimburse itself for the loss of its own property except where specifically provided for by law. A department or agency of the District of Columbia is not considered to be a Government department or agency for the purpose of filing a claim (*see* 46 Comp. Gen. 586 (1966); 36 Comp. Gen. 457 (1956)).

2037 MEASURE OF DAMAGES

a. *In general.* Subject to the exceptions set out in subsections b and d, for claims under the Federal Tort Claims Act, the measure of damages is determined by the law of the place where the act or omission occurred (28 USC §2674). When there is a conflict between local law and applicable Federal law, the latter governs.

b. *Multistate torts.* In situations involving more than one jurisdiction, the measure of damages of the United States under subsection a is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (*Richards v. United States*, 369 U.S. 1 (1962)).

c. *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for, in lieu thereof, actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought (28 USC §2674).

d. *Indemnity or contribution.* Under circumstances where the Government is deemed to be entitled to contribution or indemnity, the third party will be notified of the claim in writing and will be requested to contribute his fair share of a proposed settlement or to properly indemnify the Government. Contribution or indemnity claims will be processed and negotiated by the persons and commands listed in section 2080 when the recommended contribution of the Navy is within the settlement authority of such persons or commands. If the third party fails to make satisfactory arrangements, a valid claim may be denied in order to force the third party to be joined as a party defendant when the claimant brings suit. *See* section 2035c(2)(c) concerning settlement without indemnification or contribution.

e. *Setoff.* In a case brought by a serviceman not barred by the *Feres* doctrine (*Feres v. United States*, 340 U.S. 135 (1950)), an award will be reduced by the value of benefits received, and to be received in the future, by the serviceman (*Brooks v. United States*, 337 U.S. 49 (1949)).

2038 STATUTE OF LIMITATIONS

a. Every claim against the United States submitted for consideration under the Federal Tort Claims Act must be presented in writing within two years after the claim accrued or be forever barred (28 USC §2401(b)). The filing of suit against the United States does not constitute the presentment of a claim under this subsection or under 28 USC §2401(b) (*Gunstream v. United States*, 307 F.Supp. 366 (C.D. Cal. 1969)).

b. A tort claim is forever barred unless an action is commenced against the United States within 6 months after the date of mailing of notice of final denial of the claim by the agency to which it was presented (28 USC §2401(b)). *See* section 2034i regarding a request for reconsideration.

2039 ATTORNEY FEES

a. Attorney fees not in excess of 20 percent of any compromise or settlement made pursuant to sections 2034-2035 above may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. Where judgment is rendered in favor of the claimant by a court of competent jurisdiction or where settlement is made after suit is filed, attorney fees shall not exceed 25 percent (28 USC §2678).

b. The fee limitations noted above are imposed by statute, and in order to ensure compliance they shall be incorporated in any settlement agreement secured from a claimant. See Appendix A-20-b for a sample settlement agreement including a statement regarding attorney fees.

2040 REGULATIONS OF ATTORNEY GENERAL GOVERNING ADMINISTRATIVE CLAIMS PROCEDURE

The Regulations of the Attorney General for administrative claims under the Federal Tort Claims Act, promulgated under the authority of 28 USC §2672 and published at 28 CFR 14.1-14.11, are hereby incorporated into the Regulations of the Judge Advocate General and are quoted as follows:

TITLE 28–JUDICIAL ADMINISTRATION

PART 14–ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.

14.1 SCOPE OF REGULATIONS

14.2 ADMINISTRATIVE CLAIM; WHEN PRESENTED

14.3 ADMINISTRATIVE CLAIM; WHO MAY FILE

14.4 ADMINISTRATIVE CLAIMS; EVIDENCE AND INFORMATION TO BE SUBMITTED

14.5 REVIEW BY LEGAL OFFICERS

14.6 LIMITATION ON AGENCY AUTHORITY

14.7 REFERRAL TO DEPARTMENT OF JUSTICE

14.8 INVESTIGATION AND EXAMINATION

14.9 FINAL DENIAL OF CLAIM

14.10 ACTION ON APPROVED CLAIMS

14.11 SUPPLEMENTING REGULATIONS

14.1 SCOPE OF REGULATIONS

These regulations shall apply only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967. The terms "Federal agency" and "agency" as used in this part include the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but do not include any contractor with the United States.

14.2 ADMINISTRATIVE CLAIM; WHEN PRESENTED

(a) For purposes of the provisions of section 2672 of Title 28, United States Code, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occured by reason of the incident.

(b)(1) A claim shall be presented to the Federal agency whose activities gave rise to the claim. When a claim is presented to any other Federal agency, that agency shall transfer it forthwith to the appropriate agency, if the proper agency can be identified from the claim, and advise the claimant of the transfer. If transfer is not feasible the claim shall be returned to the claimant. The fact of transfer shall not, in itself, preclude further transfer, return of the claim to the claimant or other appropriate disposition of the claim.

(2) When more than one Federal agency is or may be involved in the events giving rise to the claim,

an agency with which a claim is filed shall contact all other affected agencies in order to designate the single agency which will thereafter investigate and decide the merits of the claim. In the event that an agreed upon designation cannot be made by the affected agencies, the Department of Justice will be consulted and will thereafter designate an agency to investigate and decide the merits of the claim. Once a determination has been made, the primary agency shall notify the claimant that all future correspondence concerning the claim shall be directed to that Federal agency. All involved Federal agencies can agree either to conduct their own administrative reviews and to coordinate the results or to have the investigations conducted by the primary Federal agency, but, in either event, the primary Federal agency will be responsible for the final determination of the claim.

(3) A claimant presenting a claim arising from an incident to more than one agency should identify each agency to which the claim is submitted at the time each claim is presented. Where a claim arising from an incident is presented to more than one Federal agency without any indication that more than one agency is involved, and any one of the concerned Federal agencies takes final action on that claim, the final action thus taken is conclusive on the claims presented to the other agencies in regard to the time required for filing suit set forth in 28 U.S.C. §2401(b). However, if a second involved Federal agency subsequently desires to take further action with a view towards settling the claim the second Federal agency may treat the matter as a request for reconsideration of the final denial under 28 CFR §14.9(b), unless suit has been filed in the interim, and so advise the claimant.

(4) If, after an agency final denial, the claimant files a claim arising out of the same incident with a different Federal agency, the new submission of the claim will not toll the requirement of 28 U.S.C. §2401(b) that suit must be filed within six months of the final denial by the first agency, unless the second agency specifically and explicitly treats the second submission as a request for reconsideration under 28 CFR §14.9(b) and so advises the claimant.

(c) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

14.3 ADMINISTRATIVE CLAIM; WHO MAY FILE

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

14.4 ADMINISTRATIVE CLAIMS; EVIDENCE AND INFORMATION TO BE SUBMITTED

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

14.5 REVIEW BY LEGAL OFFICERS

The authority to adjust, determine, compromise, and settle a claim under the provisions of section 2672 of Title 28, United States Code, shall, if the amount of a proposed compromise, settlement, or award exceeds $1,000, be exercised by the head of an agency or his designee only after review by a legal officer of the agency.

14.6 LIMITATION ON AGENCY AUTHORITY

(a) An award, compromise, or settlement of a claim by an agency under the provisions of section 2672 of Title 28, United States Code, in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when, in the opinion of the agency:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000

(c) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when the agency is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

14.7 REFERRAL TO DEPARTMENT OF JUSTICE

When Department of Justice approval or consultation is required under section 14.6 or the advice of the Department of Justice is otherwise to be requested, the referral or request of the Federal agency shall be directed to the Assistant Attorney General, Civil Division, Department of Justice, in writing and shall contain (a) a short and concise statement of the facts and of the reasons for the referral or request, (b) copies of relevant portions of the agency's claim file, and (c) a statement of the recommendations or views of the agency. Such referrals or requests to the Department of Justice may be made at any time after presentment of a claim to the Federal agency.

14.8 INVESTIGATION AND EXAMINATION

A Federal agency may request any other Federal agency to investigate a claim filed under section 2672, Title 28, United States Code, or to conduct a physical examination of a claimant and provide a report of the physical examination. Compliance with such requests may be conditioned by a Federal agency upon reimbursement by the requesting agency of the expense of investigation or examination where reimbursement is authorized, as well as where it is required, by statute or regulation.

14.9 FINAL DENIAL OF CLAIM

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 USC 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the agency for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, the agency shall have 6 months from the date of filing in which to make a final disposition of the claim, and the claimant's option under 28 USC 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final agency action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a).

14.10 ACTION ON APPROVED CLAIMS

(a) Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to the provisions of section 2672 of Title 28, United States Code, shall be paid by the head of the Federal agency concerned out of the appropriations available to that agency. Payment of an award, compromise, or settlement in excess of $2,500 shall be obtained by the agency by forwarding Standard Form 1145 to the Claims Division, General Accounting Office. When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee. When the use of Standard Form 1145 is required, it shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent or legal representative, of any award, compromise, or settlement made pursuant to the provisions of section 2672 or 2677 or Title 28, United States Code, shall be final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

14.11 SUPPLEMENTING REGULATIONS

Each agency is authorized to issue regulations and establish procedures consistent with the regulations in this part.

2041–2049 RESERVED

PART C–MILITARY CLAIMS ACT

2050 SCOPE OF PART C

The regulations of Part C apply exclusively to the administrative processing of claims against the Navy arising under the Military Claims Act (10 USC §2733).

2051 DEFINITIONS

As used in this part (sections 2050-2059):

a. The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

b. The words "military personnel or civilian employees of the Navy" include all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, volunteer workers and others serving as employees of the Navy with or without compensation, and members of the Environmental Science Services Administration or of the Public Health Service who are serving with the Navy or Marine Corps.

c. Military includes "naval."

2052 STATUTORY AUTHORITY

a. *General authorization.* Subject to the statutory exceptions set forth in section 2055d, the Secretary of the Navy–or the Judge Advocate General, subject to appeal to the Secretary–may settle and pay, in an amount not in excess of $25,000, a claim against the Navy for damage to or loss or destruction of real or personal property, or for personal injury or death, either caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss or destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise (10 USC §2733(a)).

b. *Authorization for payment of claims in excess of $25,000.* If the Secretary of the Navy considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 10 USC §2733 and subsection a of this section, he may make a partial payment of $25,000 and refer the excess to the General Accounting Office for payment from appropriations provided therefor. *See* 31 USC §724a (Supp. III 1979).

c. *Delegable authorization to pay claims not in excess of $5,000.* In any case where the amount to be paid is not more than $5,000, the Secretary of the Navy may delegate the authority of 10 USC §2733(a) and subsection a of this section, subject to appeal to the Secretary or his designee for that purpose (10 USC §2733(g)). *See* section 2080 for the Navy and Marine Corps officials with delegated authority to pay claims, and *see* section 2053h for the appellate designees under this subsection.

d. *No right to sue.* The Military Claims Act authorizes the settlement and payment of certain claims but does not authorize any right to sue the United States. The United States has consented to be sued in tort under 28 USC §1346(b) only, and, by virtue of 10 USC §2733(b)(2), Federal tort claims are not payable under the Military Claims Act.

e. *Territorial limitations.* There is no geographical limitation on the application of the Military Claims Act, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 USC §2734), the claim shall be processed under Chapter XXII of this Manual (10 USC §2733(b)(2)).

* 2053 THE ADMINISTRATIVE CLAIM

a. *Proper claimant.* In determining if a claimant is the proper party to pursue the claim, the provisions of sections 2011 and 2034a apply. Where the claim is for wrongful death, however, only one claim shall be allowed and any payment shall be apportioned according to section 2056b.

b. *Proper claim and presentation.* A claim is proper in form and presentation if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, together with a claim for money damages in a sum certain.

c. *Evidence and information in support of the claim.* See section 2013 for the evidence and information required to substantiate a claim. 10 USC §2733(b)(5) requires that a claim be substantiated in accordance with these regulations in order to be paid.

d. *Amendment of the claim.* A proper claim may be amended by the claimant at any time prior to a final disposition of the claim. An amendment of a claim shall be submitted in writing and shall be signed by the claimant or a duly authorized agent or legal representative.

e. *Payment of the claim.* Payment of a claim shall be accomplished in accordance with section 2017.

f. *Settlement agreement.* See section 2018 and Appendices A-20-b(1) and A-20-b(2). The provision concerning fee limitations is not applicable in Military Claims Act cases.

g. *Denial of the claim.* See section 2019.

h. *Appeal of the claim.*

(1) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. Such appeal shall be in writing and shall state the grounds relied upon.

(2) An appeal in any case where the amount in contention exceeds $5,000 may be decided either by the Secretary of the Navy or the Judge Advocate General, except that, where the claim is disapproved originally by the Judge Advocate General, an appeal thereof shall be decided by the Secretary.

(3) An appeal in any case where the amount in contention is $5,000 or less may be decided either by the Secretary of the Navy, the Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), or the Deputy Assistant Judge Advocate General (Claims); provided, any such appeal must be decided by an official senior to the official who originally disapproved the claim.

(4) See section 2020c for procedure for disposing of an appeal.

2054 AUTHORITY TO SETTLE

See section 2080.

2055 SCOPE OF LIABILITY

a. *Caused by a member or employee.* Subject to the exceptions of subsection d, the Navy shall be responsible under 10 USC §2733 in money damages for damage to or loss or destruction of property, real or personal, or for personal injury or death, which is caused by military personnel or civilian employees of the Navy while acting within the scope of their employment.

b. *Otherwise incident to noncombat activities.* Subject to the exceptions of subsection d, a claim for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, is payable under the Military Claims Act if otherwise incident to noncombat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operations of missiles, aircraft, and antiaircraft equipment; sonic booms; use of barrage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

c. *Specific claims payable.* Claims payable by the

Navy under subsections a and b shall include, but shall not be limited to:

(1) *Registered or insured mail.* Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act. This provision of the Act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or be otherwise incident to noncombat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Postal Service of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or for delivery to the addressee. For this reason, the maximum award to a claimant under the provisions of this section shall be limited in amount to that to which the claimant would be entitled from the Postal Service in accordance with the registry or insurance fee paid. The amount of the award shall not exceed the cost of the item to the claimant, however, regardless of the fees paid. The claimant may be reimbursed for the postage and registry or insurance fees as elements of the cost.

(2) *Loaned or rented to the Government.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government, under an agreement expressed or implied, are payable under the Military Claims Act, even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

(3) *Personal property of prisoners of war.* Claims of prisoners of war or interned enemy aliens for damage to or destruction of personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy.

(4) *Real property under lease or otherwise.* Claims for damage to real property incident to the use and occupancy thereof by the Government, whether under an express or implied lease or otherwise, are payable under the provisions of the Military Claims Act even though legally enforceable against the Government as contract claims. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

d. *Claims not payable.* Notwithstanding subsections a, b, and c, the following claims shall not be paid under 10 U.S.C. §2733:

(1) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, his agent, or his employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by that law;

(2) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat;

(3) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States;

(4) Any claim of military personnel or civilian employees of the United States for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service which claim is cognizable under the Military Personnel and Civilian Employees' Claims Act as amended (31 U.S.C. §§240-243) and applicable regulations (chapter XXI of this Manual);

(5) Any claim arising in a foreign country or possession thereof which is cognizable under the Foreign Claims Act (10 U.S.C. §2734) and applicable regulations thereto (chapter XXII of this Manual);

(6) Any claim cognizable under 10 U.S.C.

§7622 relating to admiralty claims and to claims for damages caused by naval vessels (chapter XII of this Manual);

(7) Any claim for damage to or loss or destruction of real or personal property founded in written contract, except as provided in subsections c(2) and (4) of this section;

(8) Any claim for rent of real or personal property, except as provided in subsections c(2) and (4) of this section;

(9) Any claim involving the infringement of patents;

(10) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Postal Service to authorized military personnel or civilian employees of the Navy (*e.g.*, designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, or postal officers);

(11) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of, or while in the hands of, bonded personnel;

(12) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Postal Service (*e.g.*, for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee;

(13) Any claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States;

(14) Any claim for personal injury or death of military personnel or civilian employees of the Government if such injury or death occurs incident to their service; and

(15) Any claim for damage, injury, or death caused by a member or employee of the Department of the Navy while acting within the scope of his employment, and which is in all other respects within the cognizance of the Federal Tort Claims Act and Part B of this chapter.

2056 MEASURE OF DAMAGES

In cases cognizable under the Military Claims Act (10 USC §2733), the measure of damages shall be as follows:

a. *Damage to property.*

(1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value thereof immediately after the incident. All estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs, and provided that idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

b. *Personal injury or death.* In claims for personal injury or death, the measure of damages may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury, and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim will be allowed. The amount approved therefor shall, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

c. *Limitations.* Payment shall not be made for the following elements of damage: interest, cost of preparation of claims, attorneys' fees, inconvenience, and other similar items. The cost of repair estimates reasonably required to process the claim, however, may be paid.

d. *Setoff of a recovery from a joint tort-feasor.* If a claimant has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award by the Government to the claimant.

2057 STATUTE OF LIMITATIONS

No claim may be settled under the Military Claims Act unless it is presented in writing within two years after it accrues. If such accident or incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within two years after its occurrence, any claim may, on good cause shown, be presented within two years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President (10 USC §2733(b)(1)).

2058-
2059 RESERVED

PART D–CLAIMS NOT COGNIZABLE UNDER ANY OTHER PROVISION OF LAW

2060 SCOPE OF PART D

The regulations of Part D apply exclusively to the administrative processing and consideration of claims against the Navy arising under 10 USC §2737. These claims are sometimes referred to as "nonscope" claims and are claims that are not cognizable under any other provision of law.

2061 DEFINITIONS

a. *Civilian official or employee.* Any civilian official or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

b. *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 USC 4).

c. *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the Government.

2062 STATUTORY AUTHORITY

a. *General authorization.* 10 USC §2737 provides authority for the administrative settlement in an amount not to exceed $1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or a civilian official or employee incident to the use of a vehicle of the United States at any place, or incident to the use of any other property of the United States on a Government installation.

b. *No right to sue.* There is no right to sue the United States on a claim arising under 10 USC §2737.

c. *Territorial application.* There is no geographical limitation on the application of 10 USC §2737.

2063 PROPER CLAIM AND CLAIMANT/ PROCESSING OF THE CLAIM

a. *General.* The general claims provisions of Part A apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be processed under 10 USC §2737 and this part of Chapter XX.

b. *Claims submitted pursuant to another statute.* Claims submitted under the provisions of the Federal Tort Claims Act or Military Claims Act shall, in appropriate cases, be considered automatically for an award under this part when payment would otherwise be barred because the employee or serviceman was not in the scope of his employment. If a tender of payment under this part is not accepted by the claimant in full satisfaction of his claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute pursuant to which it was submitted.

c. *Claims submitted pursuant to this statute.* Claims submitted solely pursuant to 10 USC §2737 shall be promptly considered. If a claim is denied for any reason, the claimant shall be informed in writing of this fact and that he may appeal such decision (see section 2019b) within 30 days of the notice of denial by writing to the Secretary of the Navy (Judge Advocate General). See section 2020b(2).

2064 OFFICIALS WITH AUTHORITY TO SETTLE

See section 2080

2065 SCOPE OF LIABILITY AND MEASURE OF DAMAGES

a. *Scope of liability.* Subject to the exceptions of subsection b, the responsibility of the United States shall be in money damages, not to exceed $1,000, for damage to or loss or destruction of property or for personal injury or death caused by military personnel or civilian officials or employees:

(1) incident to the use of a vehicle of the United States at any place; or

(2) incident to the use of any other property of the United States on a Government installation; and

(3) not cognizable under any other provision of law.

b. *Specific claims not payable.* A claim may not be allowed under 10 USC §2737:

(1) If the damage to or loss of property, or the personal injury or death, was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee;

(2) In the case of personal injury or death, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States;

(3) Unless it is presented in writing within two years after it accrues;

(4) Unless the amount tendered is accepted in writing by the claimant in full satisfaction of any claim against the United States arising from the incident;

(5) To the extent that the claim or any part thereof is legally recoverable by the claimant under an indemnifying law or an indemnity contract;

(6) If it is a subrogated claim; or

(7) If it is cognizable under any other provision of law.

c. *Measure of damages.* Compensation under 10 USC §2737 for damage to or loss or destruction of property, or for personal injury or death shall be computed in accordance with section 2056, except that damages for personal injury or death under this part shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States, and except that in no case under this part shall an award for damages be in excess of $1,000.

2066 STATUTE OF LIMITATIONS

A claim against the United States under 10 USC §2737 shall be presented in writing within 2 years from the date it accrues or be forever barred.

2067-
2069 RESERVED

PART E–ADVANCE PAYMENTS

2070 SCOPE OF PART E

The regulations of this part apply exclusively to the payment of amounts not to exceed $1,000 under 10 USC 2736 in advance of submission of a claim.

2071 STATUTORY AUTHORITY

10 USC 2736 authorizes the Secretary of the Navy or his designee to pay an amount not in excess of $1,000 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the Military Claims Act (10 USC 2733) or the Foreign Claims Act (10 USC 2734). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

2072 OFFICIALS WITH AUTHORITY TO MAKE ADVANCE PAYMENTS

See section 2080.

2073 CONDITIONS FOR ADVANCE PAYMENTS

Prior to making an advance payment under 10 USC 2736, the adjudicating authority shall ascertain that:

a. The injury, death, damage, or loss would be payable under the Military Claims Act (10 USC 2733) or the Foreign Claims Act (10 USC 2734);

b. The payee, insofar as can be determined, would be a proper claimant under this chapter or under the Foreign Claims Regulations (chapter XXII), or is the spouse or next of kin of a proper claimant who is incapacitated;

c. The provable damages are estimated to exceed the amount to be paid;

d. There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

e. The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

f. No payment under 10 USC 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss (a) was caused by a member or employee of the Department of the Navy acting within the scope of his employment or (b) occurred "incident to noncombat activities" of the Department of Navy as defined in section 2055b.

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2079 RESERVED

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2100 AUTHORITY:

Sections 2101 to 2129 are issued under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 USC 240-243).

2101 DEFINITIONS

In this chapter:

a. *Claim.* "Claim" means any claim filed under oath by commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the Naval Establishment, for damage, loss, destruction, capture or abandonment of their personal property incident to their service.

b. *Service personnel.* "Service personnel" means the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

c. *Civilian employees.* "Civilian employees" means employees of the Naval Establishment, including those paid on a contract basis.

d. *Navy and naval.* "Navy" and "naval" include "Marine Corps" except where the context indicates to the contrary.

e. *Damage or loss.* "Damage or loss" includes destruction, capture, or abandonment.

2102 SCOPE

a. *Maximum payable.* Under this chapter, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable per incident on a claim is $25,000.

b. *Exception in evacuation/terrorist cases.* For losses incurred in foreign countries on or after 31 December 1978, if such loss or damage results from acts of mob violence, terrorist attacks, or other hostile acts directed against the United States Government or its officers or employees, or occurs as a result of an evacuation of personnel in accordance with a recommendation or order of the Secretary of State or other competent authority which was made in response to incidents of political unrest or hostile acts by people in that country, the maximum amount payable per incident on a claim is $40,000. The factual background concerning cases which appear to fall within this category shall be reported to the Judge Advocate General (Claims) for a determination as to the applicability of this subsection and for specific adjudication authority.

2103 CLAIMS PAYABLE

Claims are payable when the damage to or loss of the claimant's personal property occurs incident to his service under any of the following circumstances:

a. *Property losses in quarters or other authorized places.* Claims are payable where property is damaged or lost by fire, flood, hurricane, or other serious occurence, or by theft while located at:

(1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government on, or in connection with, a military or naval installation; or

(2) Quarters outside the United States occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see (1) and (2) of this subsection), designated by superior authority for the reception of the property.

b. *Transportation losses.* Claims are payable where property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a government contracted carrier, an agent or agency of the Government, or by a private conveyance:

(1) when shipped under orders; or

(2) in connection with travel under orders; or

(3) in connection with travel in performance of military duty with or without troops.

c. *Marine or aircraft disaster.* Claims are payable where property is damaged or lost in consequence of perils of the sea and hazards connected with the operation of aircraft.

d. *Enemy action.* Claims are payable where property is lost, abandoned, damaged, or destroyed by:

(1) Enemy action or threat of such action;

(2) Combat, or movement in the field which is part of a combat mission;

(3) Guerilla, organized brigandage or other

belligerent activities, whether or not the United States is involved; or

(4) Unjust confiscation by a foreign power or by its nationals.

e. *Property subjected to extraordinary risks.* Claims are payable when property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official noncombat duties by the claimant, including but not limited to:

(1) Performance of duty in connection with civil disturbance, public disorder, or public disaster;

(2) Efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; or by

(3) Abandonment or destruction of property by reason of military emergency or by order of superior authority.

f. *Property used for benefit of Government.* Claims are payable where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

g. *Negligence of the Government.* Claims are payable where property is damaged or lost incident to the service of the claimant and the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment.

h. *Money deposited for safekeeping, transmittal, or other authorized disposition.* Claims for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, are payable where the funds were neither applied as directed by the owner nor returned to him.

i. *Claims for damage to or loss of motor vehicles.*

(1) Claims for damage to or loss of motor vehicles are limited to a maximum $1,000.00, not including the contents thereof, and are payable only if:

(a) The motor vehicle was located at quarters or other authorized places as defined in section 2103a of this chapter, or

(b) The damage to or loss was incurred in the authorized performance of official government business, or

(c) The damage to or loss was incurred while the motor vehicle was located on base, provided the loss or damage was caused by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism, or

(d) The damage to or loss was incurred under any of the circumstances contemplated by section 2103 a, b, d, e, or f of this chapter. See also section 2104g.

(2) Claims arising during the shipment of motor vehicles under permanent change of station orders are not subject to a $1,000.00 maximum.

(3) The following definitions pertain as used within this section.

(a) "Motor vehicles" includes automobiles, trucks, campers, recreation vehicles, boats, and motorcycles.

(b) "On base" means any fixed land area, wheresoever situated, controlled and used by United States military activities or other Department of Defense activities. Claims for damage to or loss of motor vehicles arising out of an incident occurring on board a base such as United States Naval Station, Rota, Spain (a Spanish Naval Base) or on board a NATO Base such as Allied Forces Southern Europe, Bagnoli, Naples, Italy, are not intended to be excluded by this section because the base is not "controlled" by the United States. Claims arising out of an incident occurring on board a foreign military base not controlled or used by United States military activities are intended to be excluded. In case of doubt, the matter should be referred to the Judge Advocate General (Claims).

(c) "Other unusual occurrence" does not include collision with another vehicle resulting from a traffic accident, a "hit and run", or a single-vehicle collision attributable to driver error. The term "vehicle" includes motor vehicles and non-motorized vehicles used for transportation. *See* section 2104g, infra.

(d) "Shipment" means transportation via government vessel, chartered commercial vessel, or by government bill of landing on commercial vessels, and includes storage, on-loading and off-loading incident thereto.

j. *House trailers.*

(1) The term "house trailer," as used in this chapter, denotes a residence designed to be moved overland. It includes all household goods, personal effects and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member or his dependents.

(2) Claims for loss of, or damage to, house trailers and their contents while on Government property are payable under subsection a(3). Claims

for loss of, or damage to, house trailers and their contents arising incident to shipment are payable under subsection b(1), provided that, when transported by other than the service member or an agent or agency of the Government, the carrier must have operating rights approved by the Interstate Commerce Commission if in interstate commerce, or under applicable State regulations when the shipment is within a single State.

(3) It is the owner's responsibility to place the house trailer (including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and the other parts of the house trailer) and its contents in fit condition to withstand the stress of normal transportation. The Government has the responsibility of insuring that the house trailer is inspected prior to movement to determine if it is roadworthy. Acceptance of a house trailer for shipment by a carrier is presumptive evidence that the house trailer was in condition to withstand the stress of normal transportation.

(4) The burden of proving a claim against the Government or the carrier rests on the claimant. However, the claimant can establish a *prima facie* case by proving that the damage occurred during transportation. Damage which is due to (a) the negligence of the carrier, or (b) collision while the house trailer is in the possession of the carrier, is the responsibility of the carrier. Damage which is due to apparent defects (*e.g.*, a heavily or unevenly loaded trailer; tires which are worn, undersized, or insufficient ply rating, or have deteriorated because of age or lack of use; undercarriage and frame sagging, bent, or of insufficient size or improper construction; loose panels; faulty brakes; missing equipment; etc.) unless noted by the carrier prior to acceptance for shipment, or unless otherwise excepted by contract with the Government, is also the responsibility of the carrier. If the claimant establishes that the damage occurred during shipment, the burden then shifts to the Government and the carrier to establish that they are not liable (*e.g.*, that the damage resulted solely from a latent structural defect).

(5) Evidence desirable for the proper adjudication of a house-trailer claim should include, but is not necessarily limited to, the following:

(a) Copy of the pre-move inspection report;

(b) Statement from claimant concerning condition of trailer prior to move, to include age of trailer, general condition, number and location of each prior move, whether any prior move resulted in damage, and, if so, type of damage and whether any prior claim has been paid;

(c) Copy of the damage report (generally prepared by the carrier);

(d) Government inspection, (include photographs of each area or item of damage where this may prove helpful);

(e) Statement from the driver of the towing vehicle as to the circumstances surrounding the damage, as well as detailed travel particulars;

(f) Repair bills or estimates as to the cost of repairs;

(g) Statements from the persons providing claimant with estimates of repair as to their professional opinion as to the cause or causes of each area or item of damage;

(h) Statements similar to the above by an engineer or by a member of the vehicle maintenance division of a public works department who possesses some expertise in this area;

(i) Statements from the carrier, manufacturer, and dealer as to the cause of the damage;

(j) Dates and places of all prior transportation of the trailer, and, if at Government expense, copies of the Government bills of lading.

k. *Theft from possession of claimant.* Theft from the person of the claimant is reimbursable if it is established that the theft occurred by use of force, violence, or threat to do bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreational facility operated or sponsored by the Department of Defense or any agency thereof, or in the performance of official duty. The theft must have been reported to appropriate police authorities immediately, or as soon as practicable, and it must have been reasonable for the claimant to have had on his person the quality and the quantity of the property allegedly stolen.

2104 CLAIMS NOT PAYABLE

Claims may not be allowed for:

a. *Money or currency.* Money or currency, except as provided for by section 2103h and 2103k, or when lost incident to a marine or aircraft disaster, or when lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee. The adjudicating authority should use the test of whether the claimant did the best he could under the circumstances to protect his property. Reimbursement for loss of money or currency will be limited to an amount which the adjudicating authority determines to have been reasonable for the claimant to have had in his possession at the time of the incident.

b. *Unserviceable property.* Worn-out or unserviceable property.

c. *Articles acquired for other persons.* Articles intended directly or indirectly for persons other than the claimant or members of his immediate household. This prohibition includes articles acquired at the request of others, and articles to be disposed of as gifts or to be offered for sale.

d. *Articles being worn.* Articles being worn, except under the circumstances described in section 2103c, d, e, and k above.

e. *Intangible property.* Intangible property, such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

f. *Property owned by United States.* Property owned by the United States, except where the claimant is responsible to an agency of the Government other than the Department of the Navy.

g. *Motor vehicles.* Motor vehicle claims for collision damage are not payable under this chapter, but may be paid by a military department under the Military Claims Act (Part C of Chapter XX) when caused by a member or employee of that department.

h. *Enemy property.* Enemy property or property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except when it is determined that the claimant is friendly to the United States. The prohibition also includes the property of prisoners of war or interned enemy aliens, and the property of civilian employees who have collaborated with an enemy, or with an ally of an enemy of the United States.

i. *Losses of insurers and subrogees.* Losses of insurers and other subrogees.

j. *Losses recovered from insurers or carriers.* Losses, or any portion thereof, which have been recovered from an insurer or carrier.

k. *Losses in unassigned quarters in the United States.* Claims otherwise cognizable under 2103a are not payable for property damaged or lost at quarters occupied by the claimant within the United States which are not assigned to him, or otherwise provided in kind by the Government.

l. *Contractual coverage.* Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

m. *Negligence of claimant.* Claims for lost or damaged personal property caused in whole or in part as a result of any negligence or wrongful act of the claimant, or any agent or employee of the claimant acting within the scope of employment. Negligence may be defined as failure to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances.

n. *Business property.* Property normally used for business or profit.

o. *Fees for obtaining estimates of repair.* Claims normally are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under these regulations. Where, however, in the opinion of the approving authority the claimant could not obtain an estimate without paying a fee, such a claim may be allowed in an amount reasonable in relation to the value and/or cost of repairs of the article involved, provided the evidence furnished clearly indicates that the amount of the estimate fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

p. *Theft.* In all cases where a claim is made for articles lost by theft, the claim is not payable unless evidence clearly establishes:

(1) That the claimant exercised due care in the protection of his property; and

(2) The existence of a larceny, robbery, burglary, or housebreaking.

q. *Trailers.* Loss or damage to trailers, including house trailers and integral parts thereof except as provided in 2103j. Household effects contained in trailers may be considered under 2103a(1) when the trailer is located in an assigned area on a Government installation.

r. *Violation of law or directives.* Property acquired, possessed, or transported in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

s. *Inconvenience expenses.* The expenses associated with the late delivery of household goods including but not limited to the expenses of food, lodging and furniture rental. While such a claim does not lie against the Government, the adjudicating authority and/or legal assistance officer should assist the member in filing his inconvenience expense claim with the commercial carrier concerned.

2105 TYPE AND QUANTITY OF PROPERTY

a. *Must be reasonable, useful, or proper.* Claims are payable under the provisions of this chapter only for such types and quantities of tangible personal property the possession of which shall be determined by the adjudicating authority to be reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage. Among such items of personal property is property required by law or regulations of the Navy to be possessed or used by its military personnel or civilian employees incident to their service.

b. *Ownership or custody.* Claims which are otherwise within the provisions of this chapter will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, or destruction, or for the sole reason that the claimant was not the legal owner of the property for which the claim was made (*e.g.*, borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant).

2106 COMPUTATION OF AWARD

a. *Cost of property as basis.* The amount awarded on any item of property will not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost will be based on the price paid in cash for the property or, if not acquired by purchase or exchange, the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value immediately before it was damaged or lost, less any salvage value. In lieu of deducting salvage value from the depreciated value of an item, the adjudicating authority may require surrender of the item to the Government upon payment of the full depreciated value. Items surrendered will be disposed of in the same manner as property coming into Government possession under the provisions of section 2113b of this chapter. If the cost of repair is less than the depreciated value of the property, then it is economically repairable, and the cost of repair is the amount payable.

b. *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Schedules of depreciation are issued by the Judge Advocate General to the adjudicators as guides for determining the estimated life of various classes of items.

c. *Expensive articles.* Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, will be based on the fair and reasonable purchase price of substitute articles of a similar nature.

d. *Acquisition.* Allowance for articles acquired by barter will not exceed the adjusted cost of the articles tendered in barter.

e. *Black market.* No reimbursement will be made for articles acquired in black market or other prohibited activities.

f. *Maximum allowances.* The Judge Advocate General will promulgate to the adjudicators from time to time guides for determining the maximum amount allowable for specific articles, and for establishing maximum quantities which will be allowed. In applying these guides the claimant's standard of living, income and social obligations, the size of his family, and his need to have more than the average quantities of particular items will be considered.

2107 STATUTE OF LIMITATIONS

No claim may be paid under the provisions of this chapter unless presented in writing within 2 years after such claim accrues; provided, that if the claim accrues in time of war, or in time of armed conflict in which the armed forces of the United States are engaged, or if war or such armed conflict intervenes within 2 years after date of accrual, it may, if good cause for delay is shown, be presented within 2 years after such good cause ceases to exist, but not later than 2 years after peace is established or armed conflict terminates.

2108 DEMAND ON CARRIER, CONTRACTOR, AND/OR INSURER

a. *Carrier.* Whenever property is damaged, lost, or destroyed while being shipped under Government bill of lading pursuant to authorized travel orders, the owner or claims investigating officer will file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract. When property is not shipped under Government bill of lading, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government under these regulations. This demand should be made against the last commercial carrier known or believed to have handled the goods, unless the carrier who was in possession of the property when the damage or loss occurred is known. In this event, the demand should be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document. If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

b. *Military Sealift Command.* A claim for loss, damage, or destruction of a privately owned vehicle or for household goods against an ocean carrier operating under a Military Sealift Command shipping contract and Government bill of lading is the responsibility of Military Sealift Command. No demand shall be made by individual claimants or by claim adjudicating authorities directly on an ocean carrier operating under such a contract. After payment of a claim against the Government involving loss, damage, or destruction of a privately owned vehicle or household goods by such an ocean carrier, one copy of the completed claim file shall be forwarded to Commander Military Sealift Command. Each file shall include the following:

(1) the payment voucher;

(2) the completed personnel claim form;

(3) the estimated or actual cost of repair;

(4) a document indicating the conditions of the item upon delivery to the carrier; and

(5) a document indicating the forwarding condition of the item upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available the sailing date. See the sample transmittal letter contained in Appendix section A-21-a.

c. *Nontemporary storage warehousemen.* Whenever property is damaged, lost, or destroyed while being stored under a basic agreement between the Government and the warehouseman, the owner or claims investigating officer will file a written claim for reimbursement with the warehouseman in accordance with the terms of the applicable storage agreement.

d. *Pack-and-crate contractors.* When loss or damage is the result of improper packing or crating, the claims-investigating officer will prepare and forward to the origin Navy Personal Property Office the fully documented claim against the packing-and-crating contractor including the following information:

(1) the applicable paragraph number of MIL-STD 212 and a written explanation of the deficiency;

(2) when available, photographs of the damage and of the external shipping container;

(3) a statement describing the external condition of the shipping container, i.e., any evidence of rough handling;

(4) a statement indicating whether or not there is any evidence of water damage to the external shipping container;

(5) a statement indicating whether cartons, crates, etc. were properly packed in the external shipping container and whether sufficient stuffing was added to prevent shifting of articles or packages inside the box as required by MIL-STD 212.

The origin Navy Personal Property Office will file the claim with the contractor and pursue it to settlement. If the origin transportation office was a non-Navy activity, the claims investigating officer will pursue the claim against the pack-and-crate contractor.

e. *Insurer.* Whenever the property which is damaged, lost or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of the concurrent claim against the Government as provided in section 2109.

f. *Failure to make demand on carrier, contractor, or insurer.* Failure to make demand or cooperate in preparing the Navy's demand on a carrier, contractor, or insurer, or to make all reasonable efforts to collect the amount recoverable from the carrier, contractor, or insurer, may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier, contractor, or insurer, had the claim been timely made or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing and prosecution of a claim or the evidence indicates that a demand was impracticable or would have been unavailing.

2109 CONCURRENT CLAIMS ON THE CARRIER, CONTRACTOR, OR INSURER AND THE GOVERNMENT

To expedite the settlement of household effects claims, the claim presented to the Government under these regulations should be submitted concurrently with the demand made against the carrier, contractor, and/or insurer. The claims investigating officer will prepare and submit the claim against the carrier, contractor, and/or insurer and will thereafter assume the responsibility of monitoring the claims against the carrier, contractor, or insurer to final settlement. The claimant shall be advised to direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim was filed, "Attention: Claims Investigating Officer." Further, any payment in settlement of the claim by the carrier, contractor, or insurer should be made payable to the Treasurer of the United States and forwarded to the commanding officer, "Attention: Claims Investigating Officer."

2110 FORM OF DEMAND ON CARRIER, CONTRACTOR, OR INSURER

Demands on a carrier, contractor or insurer should be made in writing on DD Form 1843 (Appendix section A-21-b) with a copy of DD Form 1845 (Appendix section A-21-d) attached. Equivalent forms or formats may be used if DD Form 1843 is not available or if the claimant has not utilized DD Form 1845 in the submission of his claim.

2111 RESPONSIBILITIES OF THE CLAIMANT REGARDING CLAIMS AGAINST CARRIERS, CONTRACTORS AND/OR INSURERS

In accordance with the provisions of this chapter, the claimant is required to take all reasonable action to perfect a timely claim against any responsible carrier, contractor, and/or insurer or to assist the Navy in the perfection of a timely claim. Failure to take exceptions at the time of delivery of household goods shipments or to make notification of later-discovered damage within a reasonable time is considered sufficient grounds for deducting, from the amount otherwise payable under the provisions of this chapter, the amount of any carrier, contractor, or insurance recovery jeopardized by failure of the claimant or his agent to act promptly and reasonably.

2112 TRANSFER OF RIGHT AGAINST THE CARRIER, CONTRACTOR, OR INSURER

The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his right, title, and interest in any claim he may have against any carrier, insurer, contractor, or other party arising out of the incident on which the claim against the United States is based. He will also furnish such evidence as may be required to enable the United States to enforce the claim.

2113 RECOVERIES FROM CARRIER, CONTRACTOR, AND/OR INSURER

a. *Monetary Recoveries.* In the event that a claimant receives payment from the United States under this chapter, and also receives compensation from a carrier, contractor, or insurer for the same loss, the United States shall request that the claimant reimburse the government with a view to ensuring that the claimant is not compensated twice for the same loss.

b. *Recovered Property.* When previously lost property is found, the claimant may, at his option accept all or part of the property and return that portion of the payment he has received from the United

States for the accepted property and surrender the remainder of the property to the Government. Surrendered property will be disposed of in accordance with standard disposal procedures.

2114 CLAIMS WITHIN PROVISIONS OF OTHER REGULATIONS

a. *Preemptive nature.* The provisions of this chapter are preemptive of other claims regulations in this Manual. However, claims not allowable under this chapter may possibly be allowable under Chapter XX, General Claims Regulations.

b. *Ship's store claims.* Claims arising from the operation of a ship's store laundry and dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

2115 CLAIMANTS

A claim may be presented only by a military member or civilian employee of the Navy, or in his name by his spouse as his authorized agent, or by any other authorized agent or legal representative. In the event the claim is filed by an agent or legal representative, this person must demonstrate his or her capacity to act in the claimant's behalf by submitting a power of attorney or other documentary evidence. If the military or civilian person is deceased, the claim may be presented by his survivor regardless of whether the claim arose before, concurrent with, or after the decedent's death. Survivors' claims will be presented in the following order of precedence:

a. Spouse;

b. Child or children;

c. Father or mother, or both;

d. Brothers or sisters, or both.

2116 FORM OF CLAIM

The claim will be submitted by presenting a detailed statement in triplicate, signed by or on behalf of the claimant, on DD Form 1842 (*see* Appendix section A-21-c) with DD Form 1845 attached (*see* Appendix section A-21-d). If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a fourth copy of the claims form clearly marked for this purpose must be included. If DD Forms 1842 and 1845 are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. Attention is directed to the following section which outlines the specific evidence required for particular classes of claims. Careful compliance with these requirements by the claimant in the preparation of his claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of the adjudicating authority to obtain additional evidence from the claimant.

2117 EVIDENCE IN SUPPORT OF CLAIMS

a. *General.* The claim should be supported by the evidence required on the claim form and, in addition, the following evidence when applicable:

(1) Corroborating statement from a person who has personal knowledge of the facts concerning the claim.

(2) Statement of property recovered or replaced in kind.

(3) Itemized bill of repair for damaged property which has been repaired.

(4) At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" means one who has experience in the line of needed repairs and is in a position to know the cost of repairs of such items in the current market. Exception to the above is permissible when in the opinion of the claims investigating officer the probable estimate fee will be out of proportion to the cost of repairs. In this situation, the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The name, address, and experience of each such "competent" person must be given. The adjudicating authority may reject any estimate or statement of the cost of repairs that does not meet the above standards. The claimant shall satisfy the claims investigating officer that items claimed as beyond economical repair are in fact in that condition.

(5) Proof of the change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property or, if not acquired by purchase or exchange, the value at the time of acquisition. The proof should be comprised of not less than two direct price quotations from the local market. In case there is no local market, the value may be properly fixed by the value at the nearest market, adding the cost of transportation. Should there be no available market, he should

submit at least one written estimate of the value from a competent person. "Competent person" in this instance is deemed to be one who, being apprised of the characteristics of the item in question, is able to render a knowledgeable estimate of its value at the time of loss. For items purchased outside the continental limits of the United States which do not contain qualities of identity to permit specific substantiation, allowances will be limited to a reasonable amount over and above the purchase price as agreed upon by the claimant and the claims officer. In this situation, allowance will not exceed double the cost of the item. Examples include custom-made items, unique items of clothing, art, household furnishings, and jewelry as distinguished from trademark items. In the event a claims officer by his experience knows that the approximate replacement cost in the area is close to what the claimant lists, the claimant will not be requested to submit evidence of the replacement cost. This fact, however, must be noted in the investigation report on the claim. In those cases where he knows the replacement cost to be less than the value claimed, he should include this information along with substantiating evidence.

(6) Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.

b. *Privacy Act requirements.* When any claimant within the scope of this chapter is requested by a person acting on the Government's behalf to supply personal information about himself which will be made a part of the claim file, the person making the request shall first provide the individual with a Privacy Act statement, in duplicate, containing the particular advice prescribed in SECNAVINST 5211.5 series. The Privacy Act statement to be given with regard to a claim within the scope of this chapter is contained in Appendix A-21-j. The original is to be signed by the claimant and made a part of the claim file, and the copy should be retained by the claimant. If the information from the claimant is requested orally, the Privacy Act statement should be orally summarized and explained as necessary to ensure that the claimant fully understands it.

c. *Waiver of written estimates.*

(1) Regardless of the total amount of the claim, the requirement for written estimates of the cost of repairs or replacement cost on any item for which the amount claimed is less than $100 normally will be waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise available is sufficient to support the claim.

(2) In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicating authority, and the claimant may submit written estimates or other supporting evidence in any case.

d. *Specific classes of claims.* Claims of the following types should be accompanied by the specific and detailed evidence as listed in this subsection.

(1) For property losses in quarters or other authorized places, a statement indicating:

(a) Geographical location;

(b) Whether quarters were assigned or provided in kind by the Government;

(c) Whether quarters were regularly occupied by the claimant;

(d) Name of authority, if any, who designated the place of storage of the property, if other than quarters;

(e) Measures taken to protect the property; and

(f) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

(2) For theft, a statement indicating:

(a) Geographical area of the loss;

(b) Facts and circumstances surrounding the loss, including evidence of larceny, burglary, or housebreaking (*e.g.*, evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and

(c) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention will be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(3) For transportation losses:

(a) Copy of orders authorizing the travel, transportation or shipment, or in lieu thereof a certificate explaining the absence of orders, and stating their substance;

(b) All bills of lading, and inventories of property shipped;

(c) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies (*see* sections 2108 and 2109);

(d) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and

(e) Where property was turned over to a Quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

Name (or designation) and address of Quartermaster, transportation officer, supply officer, or contract packer,
Date property was turned over,
Condition when property was turned over,
When and where property was packed, and by whom,
Date of shipment and re-shipment,
Copies of all manifests, bills of lading and contracts,
Date and place of delivery to claimant,
Date property was unpacked,
Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage,
Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and
Whether the last common carrier or local civilian carrier was given a clear receipt.

(f) At the time of application for shipment of household goods, the claimant shall prepare an inventory of personal property to be shipped having a value of $200 or more. The inventory or listing shall be descriptive and in detail, and shall list those items of personal property of a value of $200 or more *that will not otherwise appear on the carrier-prepared inventory* (*i.e.*, an antique chair valued at $350 would not be packed in a carton but would normally be separately listed on the carrier-prepared inventory, but a $250 movie camera would normally be packed in a carton with other items vice being listed separately on the carrier-prepared inventory). The claimant-prepared inventory shall be countersigned by an appropriate individual at the office where application for the move is made. The original of the claim-prepared inventory shall be retained by the claimant and submitted as part of his claim in the event of loss or damage to any item listed thereon. A copy thereof shall be retained by the office where application for the move is made. Nothing contained in this subsection shall relieve the claimant from also supplying evidence to support the value of the loss. Failure to prepare the inventory/listing described *supra* may be considered grounds for disallowing compensation for a claimed item. Nonetheless, if a claimant fails to prepare and submit the inventory/listing described *supra*, for whatever reason, or inadvertently omits an item or items from the inventory, he may still be compensated for the loss or damage to items which should have been listed on the claimant-prepared inventory if the claim is accompanied by proof of ownership which may be, for instance, in the form of purchase receipts, cancelled checks, photographs, or statements of disinterested persons who observed such items in claimant's home.

(4) For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

(5) For enemy action, public disaster, or public service:

(a) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(b) A detailed statement of facts and circumstances showing applicable causes enumerated in 2103d and e.

(6) For property used for benefit of Government:

(a) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and

(b) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

(7) For money deposited for safekeeping, transmittal, or other authorized disposition:

(a) Name, grade, service number, and address of the person or persons who received the money and of other persons involved;

(b) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested (see article 1922, U.S. Navy Regulations, 1948); and

(c) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

2118 FILING OF CLAIM

All claims coming within the cognizance of this chapter should, if practicable, be submitted by the claimant or his authorized agent to the commanding officer or officer-in-charge of the military activity, installation, or unit nearest to the point of delivery of the goods or where investigation of the facts and circumstances can most conveniently be made. As an alternative, the claim may be submitted to the commanding officer or officer-in-charge of the activity, installation, or unit to which the claimant belongs or is attached. Acceptance of a claim for filing will not be refused even though the claim does not appear to be within the scope of these regulations or could have been filed with another activity. Commanding officers and officers-in-charge will accept claims made by civilians, members of another armed force, veterans, or on behalf of a deceased person.

a. *Air Force claim.* Claims of Air Force personnel and civilian employees of the Air Force will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Air Force installation.

b. *Army claim.* Claims of Army personnel and civilian employees of the Army will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Army installation.

c. *Demands on carriers.* Demands on carriers will be the responsibility of the claimant's parent service.

2119 APPOINTMENT OF CLAIMS INVESTIGATING OFFICERS

Each commanding officer shall, as appropriate, appoint one or more claims investigating officers to investigate, process, and make recommendations on all claims presented to him under this chapter. Commanding officers of major or separate commands and commanding officers processing an appreciable number of claims may appoint one or more claims investigating officers on a continuing basis. This is particularly pertinent to activities receiving many shipments of household effects. Claims investigating officers will receive their technical guidance from the Judge Advocate General.

2120 INVESTIGATION OF CLAIMS

Upon receipt of a claim filed in accordance with the provisions of this chapter, the commanding officer shall refer the claim, with all available information relating thereto, to the claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate. Direct correspondence between investigating officers and commands or other naval personnel is authorized for the purpose of tracing the location or disposition of missing baggage or effects. With regard to the requirements of the

Privacy Act of 1974 (5 U.S.C. § 552a) as it pertains to obtaining personal information from claimants or witnesses, sections 0308, 2007a(5) and (7), 2009b, and 2117 apply.

2121 RECOVERY ACTION IN TRANSPORTATION AND STORAGE LOSSES

a. *Filing of concurrent claims against carriers, contractors, and insurers.* Upon submission of a claim against the Government, the claims investigating officer will prepare and submit the claim to the appropriate carrier, contractor, and/or insurer for damage, loss, or destruction of household and personal effects being shipped pursuant to authorized travel orders.

b. *Concurrent claims against carriers, contractors, and insurers.* The claimant should provide the claims investigating officer with all documents, papers, and other evidence needed to press the claim against the carrier, contractor, and/or insurer. In return, the claims investigating officer shall advise the claimant that the claim will be monitored to final settlement. The claimant will notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of liability. Any subsequent correspondence with the carrier, contractor, and/or insurer shall be identified properly with the company's claim or reference symbols.

c. *Approval or denial of concurrent claim by carrier, contractor, or insurer.*

(1) The claims investigating officer shall report any denial of a claim by a carrier, contractor, or insurer to the command where the claim has been forwarded for adjudication.

(2) Upon receipt of approval of the claim by a carrier, contractor, or insurer, the claims investigating officer shall determine that the offered settlement is representative of the contractual liability for which the claim has been made, then forward the settlement to the adjudicating authority. The adjudicating authority will review the settlement and forward it for deposit to the appropriate account.

(a) If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award. Upon acceptance of the award, the claims investigating officer shall notify the adjudicating authority (a suggested speed-letter format is shown in Appendix A-21-e).

(b) If the claimant has already received full payment from the Government, he will pay the proceeds received from the carrier, contractor, and/or insurer to the United States by endorsing the check to the Treasurer of the United States and delivering it to the command or to the claims investigating officer. If the amount to be refunded, as determined according to section 2113, is less than the amount received, remittance may be made by personal check or money order payable to the Treasurer of the United States.

d. *Nonconcurrent claims.* If an independent claim has been filed against a carrier, contractor, and/or insurer, the claimant will be asked, at the time the claim is filed with the Government, to certify whether or not he has obtained any recovery from any other party. A sample certificate is contained in Appendix A-21f. If any recovery has been obtained, appropriate comment indicating the amount recovered shall be made by the claims investigating officer on the claim being forwarded to the adjudicating authority. If action by the carrier, contractor, and/or insurer is still pending, the claimant will advise them to address all correspondence to him in care of the claims investigating officer of the command, unit, or activity at which the claim was filed, Attention: Claims Investigating Officer. The claimant shall be advised to notify the claims investigating officer promptly as to any offer of settlement or denial of liability. Forwarding of the claim to the appropriate adjudicating authority will not be delayed pending action of a carrier, contractor, and/or insurer unless it is apparent that final action by the carrier, contractor, and/or insurer will be immediately forthcoming.

e. *Failure of carrier, contractor, and/or insurer to respond.* Normally an acknowledgement, or perhaps even final action, will be received from the carrier, contractor, and/or insurer within ten days after the claim is submitted to them. In the event a response is not received to the claim or to subsequent correspondence, the matter should be reported to the origin transportation officer as a matter bearing upon the adequacy of contractual performance. The origin transportation officer will render assistance in obtaining action from the company and report the actions taken to the claims investigating officer who will monitor the claim against the carrier, contractor, or insurer until a reply has been received from the origin transportation officer.

f. *Unjustified denials by the carrier, contractor or insurer.*

(1) *Government bill of lading carriers.*

(a) *Action by the claims investigating officer.* If a Government bill-of-lading carrier or its insurer has refused to acknowledge or respond to a claim within a reasonable time (normally 30 days if applicable regulations or agreements do not specify another time limit), if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, then, in addition to initiation of administrative action as appropriate under Interstate Commerce Commission Regulations, military tender of service, or other applicable regulation or agreement, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. A copy of the referral letter with enclosures will be sent to the origin-transportation officer. The carrier should be notified of this action by a copy of the referral or by separate correspondence.

(b) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a final demand on the carrier when liability is clear. The final demand shall set forth the exact amount of liability, in view of the supporting evidence, owed by the carrier under the terms of the Government bill of lading, the basis for the determination of the amount demanded, and notification that the demand is a final demand and that the file will be forwarded for involuntary collection by withholding amounts due from the Navy if payment is not received within 30 days. If, after 30 days from the date of the final demand, reimbursement from the carrier has not been received, the case file should be forwarded to the Commanding Officer, Naval Material Transportation Office, Code 023, Bldg. 2133-5, Naval Station, Norfolk, VA 23511, requesting that the amount demanded by the final demand be setoff against subsequent Government bill of lading earnings. The amount of withholding requested must be the amount of the final demand. If the amount of the final demand is in error, a new 30-day final demand must be made. In general, a carrier should not be permitted to continue negotiations after a final demand has been made. If a misunderstanding between the claims investigating officer and the carrier is obvious from the file, negotiation prior to a final demand may be desirable. Under normal circumstances, however, if the claims investigating officer and the carrier have been unable to reach agreement, a final-demand amount should be determined and a final demand made. The carrier should not be permitted to further delay payment of his legal liability by meaningless negotiation.

(2) *Nontemporary storage warehousemen.*

(a) *Action by the claims investigating officer.* If a nontemporary warehouseman or his insurer has refused to acknowledge or respond to a claim within a reasonable time, if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. The warehouseman should be notified of this action by a copy of the referral letter or by separate correspondence.

(b) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a further demand on the warehouseman or his insurer when liability seems clear. If recovery is not effected within 30 days from this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the appropriate area Military Traffic Management Command (MTMC) Headquarters for a final determination of liability by the officer administering the warehouseman's basic agreement.

(3) *Pack-and-crate contractors.* When the origin Navy personal property office, or the destination claims investigating officer on a shipment originating at a non-Navy transportation office fails to receive adequate response or recovery from a pack-and-crate contractor within 60 days or when a claim is denied by the contractor without sufficient justification, the matter should be referred immediately to the officer administering the contract under which the services were performed. In the case of a shipment originating at a non-Navy transportation office, the referral should be made via the origin transportation office. Each referral will include a full statement, with supporting evidence, substantiating that the contractor's denial of the claim is unjustified or that the settlement offer is inadequate. Due to the relatively short duration of pack-and-crate contracts, it is desirable to expedite processing of unjustified denials.

(4) *Other carriers, contractors, or insurers.* Unjustified denial by other carriers, contractors, or insurers will be referred by the claims investigating officer to the adjudicating authority. The adjudicating authority will review the entire file and shall make a further demand on the carrier, contractor, or insurer when liability seems clear. If recovery is not received within 30 days from the date of this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the Judge Advocate General for additional recovery action.

g. *Processing of carrier checks.* On occasion, a carrier will send a check for an amount less than the adjudicated amount of the claim against the carrier, and which contains a standard liability release statement on the reverse thereof. Such a check should *not* be deposited. The check should be returned to the carrier with a demand for the full amount due. Language as follows is appropriate:

Your check in the amount of $(*amount*) in response to our letter (*date*) is hereby returned as not being an acceptable settlement offer. The adjudicated amount of your liability in this case is $(*amount*), and demand is hereby made for the full amount. Unless your check for the full amount is received within 30 days, the full amount will be set-off from amounts otherwise due to you.

2122 PREPARATION OF CLAIMS INVESTIGATING OFFICER'S REPORT

a. *General.* The claims investigating officer will prepare a written report of investigation including his recommendations. Sufficient copies will be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one copy retained at the command. Only one set of supporting papers, documents, and exhibits need be forwarded to the adjudicating authority. The claims investigating officer may, at his discretion, utilize DD Form 1844 (*see* Appendix A-21-h) as a worksheet in appropriate cases and attach a copy of the form to his report.

b. *Regular claims procedure.* The claims investigating officer's report shall include a statement of all additional facts and circumstances not pointed out by the claimant, including any facts overlooked or incorrectly stated by the claimant in his statement of the facts and circumstances of the incident, and specific recommendations regarding any items for which reimbursement in an amount less than the full amount claimed, less normal depreciation, if applicable, is recommended due to preexisting damage, inflated estimates of repair, economically repairable property claimed as beyond repair, salvage value of property, or other factors. Specific recommendations shall also include designation of those repair and replacement costs for which written estimates have been waived in accordance with section 2117b of this chapter and an explanation of any unusual circumstances justifying nonroutine processing of the claim. Any convenient format can be used for the written report as long as all relevant information is included. Appendix A-21-g shows a sample report. The claims investigating officer will complete and sign part III of DD Form 1842 (see Appendix A-21-c(2)) when investigation of the claim is complete.

c. *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. § 552a) and SECNAVINST 5211.5 series. Any indication of noncompliance shall be explained either in the investigative report on the forwarding endorsements and, when required, remedied in accordance with section 0308. The claims adjudicating authority has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior

to forwarding the report to the Judge Advocate General.

d. *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report and exhibits may be found shall be included.

e. *Small-claims procedure.* When the total amount claimed is $500 or less and the claims investigating officer has determined that all damage or loss claimed was actually incurred, that the amounts claimed are accurate and reasonable, and that the full amount claimed, limited by normal depreciation where applicable, should be allowed, he may complete part II of DD Form 1842 (*see* Appendix section A-21c(3)) in lieu of making a more detailed written report. Preparation of DD Form 1842, part II, for certification and signature by the adjudicating authority shall constitute a finding that the claim is properly presented and substantiated and a recommendation for payment in full less normal depreciation, if applicable. The foregoing small-claims procedure is not applicable to claims by Marine Corps personnel.

f. *Forwarding of claims.* For all claims not including enlisted uniform items to be replaced in kind, a claims investigating officer representing a Navy Personal Property Office or Marine Corps Transportation Office may, with the permission of his Commanding Officer, forward the claim file and claims investigating officer's report directly to the cognizant adjudicating authority. All other claims should be forwarded to the cognizant adjudicating authority via the Commanding Officer.

2123 ACTION BY COMMANDING OFFICER

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. (*See* section 2124e.) The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, *and* replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

a. *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigating officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

b. *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

c. *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in Appendix section A-214.

2124 ADJUDICATING AUTHORITY

a. *Claims by Navy personnel*

(1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

(a) The Judge Advocate General

(b) Deputy Judge Advocate General

(c) Any Assistant Judge Advocate General

(d) The Deputy Assistant Judge Advocate General (Claims)

(e) Commandant, Naval District Washington and his/her staff judge advocate

(f) Commanding officers of naval legal service offices

(g) The Staff Judge Advocate attached to Naval Supply Center, Oakland, and Naval Activities, United Kingdom.

(2) The following are authorized to adjudicate and authorize payment of personnel claims up to $10,000:

The Staff Judge Advocate attached to Naval Base, Guantanamo; Naval Base, Roosevelt Roads; Naval Station, Panama Canal.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $5,000:

(a) Officers in charge of naval legal service office detachments;

(b) Any judge advocate attached to a naval legal service office when specifically designated by the officer in charge;

(c) The Staff Judge Advocate attached to Naval Supply Center, Puget Sound;

(4) All Navy judge advocates are hereby designated and authorized to adjudicate and authorize payment of personnel claims up to $1,000;

(5) Any Navy judge advocate may be authorized to adjudicate personnel claims up to $25,000 when specifically designated by the Judge Advocate General;

(6) Any naval officer, when personally designated by the Judge Advocate General, is authorized to adjudicate and authorize payment of personnel claims up to $1,000; and

(7) Authorization to adjudicate and authorize payment of personnel claims up to a specific dollar amount is indicated *supra*, or by separate correspondence from the Judge Advocate General. Authorization to adjudicate claims up to a specific dollar amount is separate and distinct from holding an allotment. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General. Commands holding allotments from the Judge Advocate General are indicated in Appendix A-214.

b. *Claims by Marine Corps personnel.*

(1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

(a) Commandant of the Marine Corps;

(b) Deputy Chief of Staff for Manpower;

(c) Director, Personnel Services Division.

(2) The following office is authorized to adjudicate and authorize payment of personnel claims up to $1,500:

(a) Head, Personal Affairs Branch, Personnel Services Division.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $500:

(a) Head, Claims Section, Personal Affairs Branch, Personnel Services Division; and

(b) Deputy Head, Claims Section, Personal Affairs Branch, Personnel Services Division.

c. *Claims by nonappropriated-fund employees.* Claims by employees of Navy nonappropriated-fund activities for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this chapter and forwarded to the appropriate nonappropriated fund activity for payment from nonappropriated funds. Claims by employees of Marine Corps nonappropriated fund activities should be referred directly to the appropriate nonappropriated fund activity for investigation and payment.

d. *Partial payments when hardship exists.*

(1) Every instance of loss or damage cognizable under this chapter can be expected to cause some degree of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file, and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made. Each authorization of partial payment must be accompanied by:

(a) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a statement that he is aware of the penalties imposed by title 18 section 287 of the United States Code for willfully making a false claim. The claimant may present his statement on a Personnel Claim form (DD Form 1842 with DD Form 1845 attached) for the purpose of compliance with this requirement.

(b) A statement by the claims investigating officer confirming that the claimant is a proper claimant under the provisions of this chapter and setting forth his opinion regarding the reasonableness amount and type of additional substantiation necessary before investigation of the claim can be completed, and any other information relevant to the hardship of the claimant or his family.

(c) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this chapter and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this section.

(2) Inasmuch as all claims by Marine Corps personnel (military and civilian), except claims by nonappropriated fund employees, are adjudicated within Headquarters Marine Corps, Washington, D.C., and there are no field adjudicating authorities for Marine Corps personnel, the Marine claimant's Commanding Officer shall ensure compliance with all requirements of section 2124d(1)(a) through (c), and may request authority for payment by message from the Commandant (Code MSPA-4).

e. *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in subsection (a) above, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this chapter. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this chapter. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy. Accounting data for replacement of uniform items is: 97-0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 042, bureau control number 13003, authorization accounting activity 065872, transaction type 2D cost code 000000099250. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

f. *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will

be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2.

2125 LIMITATION ON AGENT OR ATTORNEY FEES

a. *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended,

(31 USC 240-243), the statutory authority underlying this chapter, provides in section 243 that:

> "No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under the authority of sections 240-243 of this title shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of sections 240-243 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1000."

b. *Federal tort claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision concerning certain Federal tort claims as described in section 2039.

c. *Other prohibition.* The provisions concerning an attorney's fee set forth in a above does not authorize a fee in those cases where a fee is prohibited for other reasons (*see* SECNAVINST 5801.1B, Legal assistance program, paragraph 15).

2126 SEPARATION FROM SERVICE

Separation from the service or termination of employment shall not bar former military personnel or civilian employees from filing claims or bar the authority of the designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provisions of these regulations when such claim accrued prior to separation or termination.

2127 MERITORIOUS CLAIMS NOT OTHERWISE PROVIDED FOR

Meritorious claims within the scope of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 USC 240-243) which are not otherwise provided for in this chapter, may be forwarded via official channels to the Secretary of the Navy (Judge Advocate General) for consideration. Exceptional meritorious cases may be approved for payment by the Secretary of the Navy or by the Judge Advocate General.

2128 RECONSIDERATION AND APPEAL

a. *General Policy:*

(1) A claim may be reconsidered which was previously disapproved in whole or in part, even though final settlement has been made, when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or as subsequently submitted. Where a claim is denied either in whole or in part, the claimant shall be given written notification of the initial adjudication and of the right to submit a written request for reconsideration to the original adjudicating authority within six months from the date the claimant receives notice of the initial adjudication of the claim. Any adjudicating authority may reconsider a claim upon which that authority has originally acted upon the request of a claimant or someone acting in the claimant's behalf, and may settle it by granting such relief as may be warranted. If it is determined that the original action was erroneous or incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. A claim which has been denied in whole or in part may be reconsidered on the adjudicating authority's own initiative.

(2) The forwarding endorsement of all adjudicating authorities shall contain specific reasons why the claim was denied, in whole or in part, or why the requested relief was not granted, and shall address the specific points or complaints raised by the claimant's request for reconsideration.

b. *Appeals procedure for claims submitted by Navy personnel.*

If an adjudicating authority does not grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire original file and the adjudicating authority's recommendation, to the nearest appropriate $25,000 adjudicating authority for final disposition. Final reconsideration of claims initially adjudicated by $25,000 adjudicating authorities will be made by the Judge Advocate General. (*See* section 2124a).

c. *Appeals procedure for claims submitted by Marine Corps personnel.* Where Marine Corps adjudicating authorities listed in subparagraph 2124b(1) fail to grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire original file and the adjudicating authority's recommendation, to the Judge Advocate General. Appeals of claims adjudicated by all other Marine Corps adjudicating authorities will be forwarded in the same manner as above to the Director, Personnel Services Division, Headquarters Marine Corps, for final disposition.

2129 AUTHORIZATION FOR ISSUANCE OF INSTRUCTIONS

The Judge Advocate General of the Navy may issue such amplifying instruction or guidance as may be considered appropriate to give full force and effect to the purposes of this chapter.

Chapter XXII

FOREIGN CLAIMS REGULATIONS

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2201 GENERAL

Claims for personal injury to, or death of, any inhabitant of a foreign country or damage to, or loss of, real or personal property of a foreign country, political subdivision, or inhabitant of a foreign country, occurring outside the United States, its territories, commonwealths, or possessions and caused by its military forces or individual members thereof (whether military personnel or civilian employees) or otherwise incident to noncombat activities of such forces are within the scope of the Foreign Claims Act (10 U.S.C. §2734). The word "claims" as used in this chapter refers to those demands for payment submitted by individuals, partnerships, associations, or corporations, including foreign countries, and states, territories, and other political subdivisions of such countries, other than such demands for payment as arise under ordinary obligations incurred by the Department of the Navy in the procurement of services or supplies.

2202 PURPOSE

The purpose of the Foreign Claims Act (10 U.S.C. §2734) is "to promote and maintain friendly relations" in foreign countries "through the prompt settlement of meritorious claims." The regulations of this chapter are to be so administered as to effectuate this expressed purpose of Congress.

2203 TERRITORIAL APPLICATION

The provisions of this chapter are applicable to claims arising outside the United States, its territories, commonwealths, or possessions. The fact that a claim arises at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States does not preclude consideration of such a claim which would otherwise be within the Foreign Claims Act.

2204 ACTS NOT WITHIN SCOPE OF EMPLOYMENT

The doctrine of scope of employment has no application to foreign claims arising from the acts of military personnel and other-than-indigenous civilian personnel. Foreign claims arising from the acts of indigenous civilian personnel may be allowed only if such employee was acting within the scope of his employment, unless, and only to the extent that, an employer or owner of the property involved would be held liable under local law under the circumstances.

2205 CRIMINAL ACTS

The fact that the act giving rise to the claim may constitute a crime does not bar relief. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the act of the military member or civilian employee of the United States which caused the damage, injury, or death was a crime or other wrongful act, or negligence, or mere error of judgment.

2206 ELEMENTS OF DAMAGE

In computing damages for personal injury or death or damage to personal property, the law and local standards of the country where the incident occurred, which were in effect on the date of the accrual of the claim, will be controlling. In case of death, only one claim will be considered, and the amount approved will be apportioned to beneficiaries in the proportions prescribed by local law and standards.

2207 BAILED OR LEASED PROPERTY

Claims for damage to, or loss or destruction of, personal property, otherwise within the Foreign Claims Act, may be settled notwithstanding the fact that the property was loaned, rented, or otherwise bailed to the Government under an agreement, expressed or implied. Claims for rent of personal property are not payable under these regulations.

2208 USE AND OCCUPANCY OF REAL PROPERTY

Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, expressed or implied, or otherwise, are payable under the provisions of these regulations even though legally enforceable against the Government as contract claims. Payment may, however, be precluded by the provisions of section 2213. Claims payable under this section may be processed as contract claims if it is deemed to be in the best interests of the Government. Claims for rent of real property are not payable under this chapter.

2209 OTHER NONCOMBAT ACTIVITIES

Claims for damage to, or loss or destruction of, property, or for personal injury or death, though not caused by acts or omissions of military personnel or civilian employees of the Navy, are payable under the provisions of this section if otherwise incident to the noncombat activities of the Navy. In general, the claims within this category are those arising out of authorized activities which are peculiarly military in nature, having little parallel in civilian pursuits, and which arise out of situations that historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of military personnel or civilian employees is present. Claims arising out of activities which involve the use of dangerous instrumentalities, such as explosives, or which result from maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and anti-aircraft equipment, movement of combat vehicles or other vehicles designed especially for military use, or the use of instrumentalities having latent mechanical defects are also included regardless of whether such resulting damage, injury, or death is traceable to acts or omissions of military personnel or civilian employees of the United States.

2210 PERSONS EXCLUDED AS CLAIMANTS

The following classes of claimants are among those excluded:

a. *Inhabitants of the United States.* Members and civilian employees of the Armed Forces of the United States and their dependents who are inhabitants of the United States and who are in a foreign country primarily because of their sponsors' or their own military orders; and

b. *Enemy aliens.* Nationals of a country at war with the United States, or any ally of such an enemy country, except as the Foreign Claims Commission considering the claim, or the local military commander shall determine that the claimant is friendly to the United States.

2211 CLAIMS EXCLUDED

The following classes of claims are excluded:

a. Claims purely contractual in character;

b. Private contractual and domestic obligations of individual military personnel or civilian employees;

c. Claims based solely on compassionate grounds;

d. Bastardy claims; and

e. Claims for patent infringements.

2212 NEGLIGENCE OR WRONGFUL ACT ON THE PART OF CLAIMANT

No claim will be allowed where the damage, injury, or death is proximately caused, in whole or in part, by negligence or wrongful act on the part of the claimant, his agent, or employee. This limitation is applicable to situations where, under the law of the country where the claim arises, contributory negligence bars recovery. However, if, under the law or custom of the country in which the claim arises, such contributory negligence or wrongful act is not recognized as a bar to recovery in tort claims, or is held to be a factor diminishing the extent of the claimant's recovery, then such local law or custom will be applied as far as practicable in determining the effect of such negligence or wrongful act.

2213 COMBAT ACTIVITIES

Claims for damage to, or loss or destruction of, property, or for personal injury or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act. *But see* 10 U.S.C. §2734(b)(3).

2214 CLAIMS OF SUBROGEES

In cases of damage to or loss or destruction of property or personal injury or death covered by insurance, settlement will be made solely with the insured or his legal representative, rather than with the insurer, or with both the insured and the insurer. No inquiry will be made into the relative interests as between insured and insurer. The entire claim, including any portion covered by insurance, will be filed by, or on behalf of, the insured and payment of the entire amount allowed will be made to the insured as the real claimant. Claims by insurers in their own right are not within the provisions of the Foreign Claims Act and will not be considered. Insurers presenting such claims shall be informed that subrogation claims are not recognized under the Act. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney or other documentary evidence satisfactory to the Foreign Claims Commission.

2215 STATUTE OF LIMITATIONS

A claim may be allowed under this chapter only if presented within two years after it accrued. A claim presented to a foreign government under applicable treaty or agreement within this time limit satisfies this requirement.

2216 NATURE OF CLAIM

Any claim will be considered if it states the material facts with such definiteness as to give reasonable notice of the time, place, and nature of the accident or incident out of which the claim arose and an estimate or statement of the damage, loss, destruction, injury, or death resulting. The claim should be signed by, or on behalf of, the claimant and should, if practicable, be under oath. In cases in which the claim is made in behalf of the true claimant, satisfactory evidence of authority to act for the claimant must be furnished.

2217 CLAIMS FOR DAMAGE OCCASIONED BY NAVAL VESSELS

Unless specifically authorized by the Judge Advocate General in each case, the Foreign Claims Commission shall not assume jurisdiction or proceed to hear any claim for damage occasioned by a naval vessel. This provision applies to claims for damage caused to land structures as well as claims of an admiralty nature. The occurence of any such damage, if brought to the attention of a claims commission, shall be reported immediately to the Judge Advocate General: Attention Admiralty Division.

2218 APPOINTMENT AND AUTHORITY OF FOREIGN CLAIMS COMMISSION

a. *Appointing Authority.* All Navy commanding officers are hereby granted authority to appoint Foreign Claims Commissions. All Marine Corps commanding officers are granted authority to appoint Foreign Claims Commissions, provided a member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps is appointed to the commission. All claims which are presented to Marine Corps commands which do not have a member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps attached will be forwarded to the nearest Navy or Marine Corps command with an active Foreign Claims Commission. For the purposes of the Foreign Claims Act and these regulations, the Judge Advocate General; the Officer in Charge, U.S. Sending State Office for Italy; Chiefs of Naval Missions (including chiefs of the naval section of military missions); Chiefs, Military Assistance Advisory Groups (including Chiefs, Navy Section, MAAGS); and naval attaches, are to be considered commanding officers. Commissions may be appointed to consider each claim as presented or one commission constituting a standing claims commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented shall refer the claim to such a commission.

b. *Composition of commissions and limitations on adjudicating authority.* Claims commissions may consider claims in any amount, and are hereby granted authority to approve in full or in part, or to dissapprove, claims for not more than $25,000. Allowance of any claim, however, in excess of the following amounts is subject to the approval of the Judge Advocate General, Deputy Judge Advocate General, or the Assistant Judge Advocate General (Civil Law), or, with respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy.

(1) One-officer commission–$5,000;

(2) One-officer commission composed of a member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps–$10,000;

(3) Three-officer commission–$10,000; and

(4) Three-officer commission which includes at least one member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps–$20,000.

2219 MEMBERSHIP OF COMMISSIONS

Foreign claims commissions shall consist of one or three commissioned officers of the Navy or Marine Corps whose grades and experience are commensurate with the responsibilities to be executed in carrying out the purposes of the Foreign Claims Act. An officer of another armed force may serve on a Navy claims commission only with the consent of the Secretary of his department, or his designee, but will perform his duties under the regulations set forth in this chapter. When a naval officer is requested to serve on a claims commission of another armed force, the immediate commanding officer of such officer is hereby designated to determine his availability pursuant to the authority of 10 U.S.C. §2734(a).

2220 NO FORMAL PROCEDURE PRESCRIBED

No formal procedure for the conduct of an investigation of a foregin claim is prescribed. However, the investigative procedures as set forth in Chapter VI of this Manual should be followed as a guide. With regard to the requirements of the Privacy Act of 1974 (5 U.S.C. § 552a) as it pertains to obtaining personal information from claimants or witnesses other than foreign nationals, sections 0308, 2007(a)(5) and (7), 2009b, and 2013b apply. A transcript of the testimony of witnesses is not required, and only the substance of statements of witnesses need be recorded. It is desirable, however, that signed statements of material witnesses be made a part of the record. The formal rules of evidence need not be adhered to, and any evidence, regardless of its form, which the commission deems material may be received and evaluated.

2221 REPORT OF PROCEEDINGS

a. The commission shall make a written report of each claim. The report shall include:

(1) a copy of the appointing order creating the commission,

(2) the claim document,

(3) the dates of the proceedings,

(4) the amount claimed stated in the indigenous currency and the conversion into United States currency at the existing official rate of exchange on the date of initial consideration of the claim.

(5) a brief summary of the facts, including the date of incident giving rise to the claim, the date the claim was filed, the nature and extent of the damages or injuries, and the necessary jurisdictional facts,

(6) signed statements of material witnesses or transcripts of their oral testimony for claims in excess of the commission's authority,

(7) signed Privacy Act statements of the claimant and material witnesses other than foreign nationals,

(8) an evaluation of applicable local laws and customs,

(9) the date the commission reached its final determination,

(10) the amount awarded, or recommended to be awarded, stated in the indigenous currency and the conversion into United States currency at the existing official rate of exchange on the date of final determination,

(11) an explanation of the basis of any recommendation in excess of the commission's authority,

(12) a release from the claimant as required by section 2223 when an award has been accepted, or a copy of the notice of denial when the claim has been disallowed.

b. When the commission has approved a claim which is within its final adjudicating authority, the original of the report and all allied papers shall be submitted to the appointing authority.

c. When the commission recommends approval of a claim in excess of its adjudicating authority, a legible copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain the original of all papers for its files.

d. When the commission has disallowed for any reason a claim within its final adjudicating authority or has recommended disallowance of a claim in excess of its final adjudicating authority, the original and one copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain one copy for its files.

e. The commission's report will not be released or shown to the claimant without the express approval of the Judge Advocate General.

f. When a claim cannot be adjudicated and settled within 30 days of its submission, the report required in subsection a, to the extent possible, shall be immediately prepared and forwarded to the Judge Advocate General with an explanation of the delay.

2222 NOTIFICATION OF AWARD AND PAYMENT

a. *Notification:* When a commission determines that a claim is meritorious and approves an award within its authority to pay in accordance with section 2218b, or when a larger award has been approved by the Judge Advocate General, the claimant shall be notified. When a commission determines that a claim is meritorious and recommends payment of an amount in excess of its authority, the commission may advise the claimant that the matter has been referred to the Judge Advocate General of the Navy for consideration. Under no circumstances may the claimant be notified of the amount of the recommended award.

b. *Payment.* When a commission has approved an award for payment within its final adjudicating authority, or when a larger award has been approved by the Judge Advocate General, the convening authority shall submit the original and one copy of the commission's report and the release required by section 2223 to the nearest Navy or Marine Corps disbursing officer, or to any United States disbursing officer if no Navy or Marine Corps disbursing officer is reasonably available, for payment of the claim. Foreign claims are paid under an open allotment with fund citation as follows: 97-0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 421, bureau control number 11003, authorization accounting activity 065872, transaction type 2D, cost code 000000099252. Copies of paid vouchers will be forwarded immediately to the Naval Regional Finance Center, Code FSR 12332, CM3, Room 528, Washington, D.C. 20371 and to the Office of the Judge Advocate General, Department of the Navy, Code 07, 200 Stovall Street, Alexandria, Virginia 22332.

2223 RELEASES

a. A release shall be obtained from the claimant in every case in which an award is accepted.

b. The release executed by the claimant should release the United States and also release the tortfeasor or the persons who have occasioned the damage, injury, or death, if their identity is known. If the identity of such persons is unknown, the release should recite that the claimant also releases the person or persons who occasioned the damage, injury, or death, the names and identity of said person or persons being unknown to the claimant.

c. The release should preclude any possible future assertion of the claim for which the United States has made compensation.

d. A suggested release is contained in Appendix A-22-a.

2224 APPEAL AND RECONSIDERATION

a. *Appeal.* While there is no right to appeal from the action of a Foreign Claims Commission, the commission may reconsider its action upon the written request of the claimant or on its own initiative. If, after reconsideration, the commission again denies a claim, or the claimant declines to accept an award in full satisfaction of his claim, the commission's report shall be forwarded to the Judge Advocate General in accordance with section 2221d.

b. *Reconsideration.* The Judge Advocate General may refer a claim for reconsideration to the original commission, a successor commission, or to a commission convened by the Judge Advocate General.

2225 CLAIMS IN EXCESS OF $25,000

a. Foreign claims which cannot be settled for $25,000 or less will be promptly considered and reported to the Judge Advocate General for legal review and appropriate administrative action. The record in such proceedings shall include signed statements of material witnesses or transcripts of their oral testimony. The Foreign Claims Commission shall forward with any such claim its findings and recommendations as to the action to be taken (including its findings as to the extent and nature of the damage, injury, and/or death sustained) together with, if practicable, a statement from the owner of the property or the person injured, or the legal representative of the person killed, signifying his willingness to accept the amount so found in full satisfaction and final settlement of his claim. In all such cases, the original and two copies of the report, claim, and supporting papers shall be forwarded. The remaining copy should be retained by the commission for its files.

b. Upon review of the file, the Judge Advocate General will forward a recommended action to the Secretary of the Navy who will determine an appropriate resolution. The Secretary may authorize the claims commission to pay the claimant $25,000 and thereafter refer the excess to the General Accounting Office for payment from appropriations provided therefor. *See* 31 USC §724a (Supp. III 1979).

2226 CLAIMS OUTSIDE THE JURISDICTION OF THE COMMISSION

Claims arising from incidents on the high seas are ordinarily not within the jurisdiction of a Foreign Claims Commission. *See* section 2217. In cases in which a commission considers that the claimant (or decedent in the case of a death claim) is not an inhabitant of a foreign country, or is not the government or a political subdivision of a foreign country, reports shall be forwarded in triplicate to the Judge Advocate General as in cases under section 2225.

2227 CLAIMS ARISING IN SPECIFIED FOREIGN COUNTRIES

a. *NATO Status of Forces and similar agreements.* The United States has ratified the NATO Status of Forces Agreement and has entered into similar agreements with other foreign countries. Article VIII of the NATO Status of Forces Agreement and certain provisions of other agreements are inconsistent with the unrestricted use of the Foreign Claims Act and its implementing regulations in certain countries. Accordingly, directives of the cognizant area commander shall be consulted and claims shall not be referred to foreign claims commissions until it has been determined that such action is consistent with the provisions of the aforementioned agreements and their implementing directives. Department of Defense Directive 5515.3 series (NOTAL) directs that, where a single service has been assigned responsibility for claims in a country or area, all claims arising under the Foreign Claims Act (10 U.S.C. §2734) and the Military Claims Act (10 U.S.C. §2733) shall normally be settled and paid by claims commissions or other claims settlement authorities appointed by the Secretary of that military department, or his designee, in accordance with the department's regulations. In countries in which the NATO Status of Forces Agreement or other similar agreement is in force, incidents which may give rise to tort claims against the United States arising from acts or omissions of naval personnel, or members of the civilian component of the naval service, including claims for death or personal injury, resulting from the navigation or operation of a ship, or from the loading, carriage, or discharge of its cargo, shall be investigated and reports shall be made in accordance with instructions promulgated by the cognizant naval commanders.

b. *Single-service responsibility and cross-servicing.* Single-service responsibility for processing claims under this chapter shall be accomplished as provided in Chapter XX, section 2024. Where cross-servicing of claims has been accomplished, the forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.

2228 CLAIMS GENERATED BY CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Department of Defense Directive 5515.3 series (NOTAL) provides that all Foreign Claims Commissions are designated to settle and pay claims for damage caused by civilian employees of the Department of Defense other than an employee of a military department.

2229 ADVANCE PAYMENTS

Advance payments may be made pursuant to the provisions of sections 2070-73 and 2080. In addition to the adjudicating authorities authorized by section 2072 to make advance payments, all foreign claims commissions may make advance payments provided such action is approved by the Commanding Officer appointing the commission.

Chapter XXIII

NONAPPROPRIATED FUND CLAIMS REGULATIONS

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2301 GENERAL

a. Nonappropriated-fund activities are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Navy Department and if the degree of control and supervision by the Navy Department is more than casual or perfunctory. *Compare United States v. Holcombe*, 277 F.2d 143 (4th Cir. 1960) and *Scott v. United States*, 226 F.Supp. 846, (D. Ga. 1963). To the extent that sovereign immunity is waived by the Federal Tort Claims Act, therefore, the United States remains ultimately liable for payment of nonappropriated-fund-activity claims. It is policy to pay these claims from nonappropriated funds and to process them primarily through nonappropriated-fund-activity claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated-fund-activity claims.

b. Claims arising out of the operation of nonappropriated-fund activities, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated-fund activities. All claims should be submitted to the command having cognizance over the nonappropriated-fund activity involved.

2302 NOTIFICATION

Some nonappropriated-fund activities carry commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Naval Supply Systems Command determine whether nonappropriated-fund activities within their cognizance shall carry liability insurance or become self-insurers, in whole or in part. When the operations of nonappropriated-fund activities result in property damage or personal injury, the insurance carrier, if any, should be given written notification immediately. Notification *should not* be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability.

2303 PROCESSING CLAIMS

a. *Responsibility for processing.* The primary responsibility for the negotiation and settlement of claims resulting from nonappropriated-fund activities is normally with the nonappropriated-fund activity and its insurer. The standard procedures described in Chapter XX for investigating and processing claims must, however, be followed in order to protect the residual liability of the United States.

b. *Negotiations*

(1) When a nonappropriated-fund activity is insured, the insurer will normally conduct negotiations with claimants. The appropriate Naval adjudicating authority has the responsibility of monitoring the negotiations conducted by the insurer. Such monitoring shall be limited to ascertaining that someone has been assigned to negotiate, to obtaining periodic status reports, and to closing out files on settled claims. Any dissatisfaction with the insurer's handling of the negotiations should be referred directly to the Judge Advocate General for appropriate action.

(2) When there is no private insurer and the nonappropriated-fund activity has made no independent arrangements for negotiations, the appropriate Navy adjudicating authority is responsible for conducting negotiations. Under special circumstances, even when there is an insurer, the appropriate Naval adjudicating authority may conduct negotiations, provided the command involved and the insurer agree to it. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the nonappropriated-fund activity, or its insurer, for payment from nonappropriated funds.

(3) In cases where payment may be authorized under some statute, such as the Foreign Claims Act, but where there is no negligence and neither the nonappropriated-fund activity nor its insurer is legally responsible, the claim may be considered for payment from appropriated funds or may be referred to the Judge Advocate General for appropriate action.

c. *Denial.* Claims resulting from nonappropriated-fund activities may be denied only by the appropriate Naval adjudicating authority, since such a denial is required to begin the 6-month limitation on filing suit under the Federal Tort Claims Act. Claims which have initially been processed and negotiated by a nonappropriated-fund activity or its insurer should not be denied until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend in court. Claimants shall be notified of a denial in accordance with section 2019.

2304 PAYMENT OF CLAIMS

a. *Small claims*. Any claim not covered by insurance (or if covered by insurance and not paid by the insurer) which can be settled for $100 or less may be adjudicated by the commanding officer of the activity concerned or his designee. The claim will be paid out of funds available to the commanding officer.

b. *Other claims.* Claims in excess of $100, for which private insurance is not available and which have been negotiated by the Navy, shall be forwarded to the appropriate headquarters command for payment from nonappropriated funds. Private insurance is usually not available to cover losses which result from some act or omission of a mere participant in a nonappropriated-fund activity. In the event the nonappropriated-fund activity declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

2305 CLAIMS BY EMPLOYEES

a. *Property*. Claims by employees of nonappropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with Chapter XXI and forwarded to the appropriate nonappropriated-fund activity for payment from nonappropriated funds.

b. *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or of foreign nationals employed within the United States.* The compensation provided by the Longshoremen's and Harbor Workers' Compensation Act (33 USC 901-950) was extended to provide for employees of nonappropriated-fund activities who suffered injury or death arising out of and in the course of their employment (5 USC 8171). If there is a substantial possibility that an employee's injury or death is covered by the Longshoremen's and Harbor Workers' Compensation Act, a claim should first be made under that Act since it is the exclusive basis for Government liability for injuries or deaths which are covered (5 USC 8173).

c. *Personal injury or death of foreign nationals employed outside of the Continental United States.* Employees who are not citizens or permanent residents, and who are employed outside of the Continental United States, are protected by private insurance of the nonappropriated-fund activity or by other arrangements. (5 USC 8172). When a nonappropriated-fund activity has neglected to obtain insurance coverage or to make other arrangements, the matter will be processed as a foreign claim, or a Federal Tort Claims Act claim if appropriate, and any award will be paid from nonappropriated funds.

Chapter XXIV

AFFIRMATIVE CLAIMS REGULATIONS

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PART A–MEDICAL CARE CLAIMS

2401 DEFINITIONS

For purposes of this chapter:

a. *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

b. *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Claims);

(2) The commandants of all naval districts not served by naval legal service offices, and their district judge advocates;

(3) The officers in charge of all naval legal service offices, except naval legal service offices in countries where another service has single service responsibility;

(4) The officers in charge of U.S. sending state offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

c. *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee, *e.g.*, where the tortfeasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

d. *The Act.* "The Act" means the Medical Care Recovery Act (42 U.S.C. §§2651-53)

e. *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

f. *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claim.

2402 AUTHORITY OF THE JUDGE ADVOCATE GENERAL AND JAG DESIGNEES

a. *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (*i.e.*, a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (*e.g.*, in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

b. *Authority of JAG and certain JAG designees.*

(1) The Judge Advocate General or any cognizant JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) Any cognizant JAG designee, after considering the factors set forth in section 2405, may compromise or waive any claim not in excess of $40,000 and issue a release therefor.

c. *Claims exceeding $40,000.* Claims in excess of $40,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

d. *Potential Value of Claims.* When settlement, compromise or waiver is imminent and the final NAVJAG 5890/12 has not been filed, JAG designees are authorized to estimate the potential value of the claim and to take appropriate action if the potential value comes within their settlement authority.

e. *Recomputation of Claims.* JAG designees are authorized to recompute the amount of claims reported on form NAVJAG 5890/12 in accordance with the standards of *Tolliver v. Shumate,* 151 W. Va. 105, 150 S.E.2d 579 (1966), and *United States v. Jones,* 264 F. Supp. 11 (1967). The information contained on the back side of form NAVJAG 5890/12, the particular practices of the hospital involved and the known facts of the case will be considered. Hospitalization periods may be subtracted from the claim when such hospitalization was unnecessary, (such as where a patient was given leave, liberty, or was awaiting assignment to new duties) or may be charged at the reduced rate of an outpatient visit for each day of hospitalization where medical treatment was actually rendered, but hospitalization in a civilian hospital would have been unnecessary or inappropriate. If, upon recomputation, the claim is within the authority of the JAG designee making such recomputation, the claim may be acted upon by that JAG designee.

f. *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice, (2) a suit has been instituted against the United States by the third party, or (3) a suit has been instituted against the individual who received or is receiving the medical care described above, and for whose negligence the United States may be held liable.

g. *Restrictions on contact with Department of Justice and United States Attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. Attorneys except in those cases (1) where the Department of Justice or a U.S. Attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3) where such action is authorized by the Judge Advocate General.

2403 REPORT OF CARE AND TREATMENT

a. *NAVJAG Form 5890/12.* The front side of NAVJAG Form 5890/12 (*see* Appendix section A-24-d(1)) shall be used by all Navy medical facilities to report the value of medical care furnished to any patient (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation, no-fault insurance, or under medical-payments insurance (*e.g.,* in all automobile accident cases). Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG Form 5890/12 shall show the patient the Privacy Act statement printed at the bottom of the form and shall have the patient sign his name beneath the statement.

b. *Computations.* The front side of NAVJAG Form 5890/12 shall be computed by using the rates set out in Appendix A-24-c (1) and (2). All computations by medical personnel and any necessary recomputations will be made pursuant to section 2402e.

c. *Submission of the front side of NAVJAG Form 5890/12.* The front side of NAVJAG Form 5890/12 shall be submitted to action JAG designee at the following times:

(1) An "initial" submission of the front side of NAVJAG Form 5890/12 shall be made as soon as practicable after the patient is admitted if it appears that inpatient care will last three or more days, or that more than ten outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of the front side of NAVJAG Form 5890/12 shall be made every four months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of the front side of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital.

The hospital to which the patient is transferred should be noted on the form. Report Control Symbol 5890-1 is assigned to this report.

d. *Supplementary documents.* A narrative summary (Standard Form 502) should accompany the final submission of the front side of NAVJAG Form 5890/12 in all cases involving inpatient care. In addition, when Government care exceeds $1,000, the hospital should complete and submit to the action JAG designee the back side of NAVJAG Form 5890/12 (*see* Appendix A-24-d(2). On this part of the form, the determination of "patient status" may be based on local hospital usage.

e. *Information for health record and for action JAG designees.* Copies of all NAVJAG Forms 5890/12 shall be retained in the health record of the patient. Action JAG designees shall be notified immediately when a patient receives treatment subsequent to the issuance of a "final" NAVJAG Form 5890/12 if the subsequent treatment is related to the treatment which gave rise to the claim.

f. *Treatment of non-naval personnel.* Where care is provided to personnel of another Federal agency or department by a naval medical facility, that agency or department generally will assert any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 shall be forwarded directly to the appropriate addressee as follows:

(1) *U.S. Army:* Commanding general of the Army or comparable area commander in which the incident occurred;

(2) *U.S. Air Force:* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided;

(3) *U.S. Coast Guard:*
Commandant (G-LCL/34)
U.S. Coast Guard Headquarters
2100 Second Street, N.W.
Washington, D.C. 20593

(4) *Department of Labor:* Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;

(5) *Veterans Administration:* Director of the Veterans Administration hospital responsible for medical care of the injured party;

(6) *Department of Health, Education, and Welfare:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred.

g. *Treatment of naval personnel by other Federal agencies.* Where medical care is provided to naval or Marine Corps servicemen, retirees, or their dependents by another Federal department or agency, the Department of the Navy generally will assert any claim on behalf of the United States. Appropriate forms should be forwarded to the action JAG designees.

h. *Civilian medical care.* The district medical officers and the district dental officers are responsible for paying emergency civilian medical expenses incurred by active-duty servicemen. Such officers should furnish evidence of payment to the action JAG designee (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (*e.g.*, in all automobile accident cases).

i. *CHAMPUS cases.* CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) contractors for hospital treatment have been directed by the Executive Director, OCHAMPUS, Denver, Colorado 80240, to forward reports of payments in injury cases directly to the action JAG designees. Reports of payments for physician and outpatient care may be obtained by JAG designees from the appropriate fiscal administrators.

2404 INVESTIGATIONS

a. *When required.* Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency, private facility, or individual under circumstances which may give rise to a medical care claim, an investigation shall be conducted in the manner and form prescribed in chapter XX. However, no investigation is required for the purposes of this chapter if the medical care furnished does not exceed three inpatient days or ten outpatient treatments. In cases where the Department of the Navy receives reimbursement from another department or agency for medical care furnished at a naval facility, that department or agency will normally be responsible for investigating the incident giving rise to the medical care and processing any resulting claim. See section 2403f for addresses of other departments and agencies.

b. *Consolidation.* Separate investigations are not required for the purposes of this chapter in cases where there has been an investigation for other purposes which can be used as a basis for determining liability. It shall be the responsibility of the action JAG designee, upon receipt of a NAVJAG Form 5890/12 or equivalent CHAMPUS forms, to supervise and to avoid duplication of investigative effort and to request an investigation in those cases where it appears that none has been or is likely to be conducted.

c. *Information for action JAG designee.* All investigations, regardless of origin, involving a possible medical care claim, shall be routed via, or a copy forwarded to, the action JAG designee.

2405 DETERMINATION, ASSERTION, AND COLLECTION OF CLAIMS

a. *Determination and notice of claim.* Action JAG designees, regardless of the amount of the claim, shall determine liability in accordance with the law of the state or country in which the incident occurs. If the JAG designee determines that a third party is liable, he shall forward a "Notice of Claim" (Standard Form 96) to the third party. If he determines that an insurance company or workmen's compensation carrier is liable, he shall forward the company an appropriate notice of the Government's claim. If he determines that there is no liability, this fact shall be reflected in the endorsement on any information forwarded to the Judge Advocate General. The specific reasons supporting the determination of no liability should be included. If the action JAG designee is in doubt on the question of liability, the matter should be submitted to the Judge Advocate General for final decision.

b. *Foreign claims.* Claims against a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such foreign government, shall not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof shall be made as provided in this chapter unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

c. *Advice for injured party.* In cases where an action JAG designee determines that third-party liability is indicated and a "Notice of Claim" (Standard Form 96) is issued, the injured party shall be contacted and advised in writing that:

(1) Under the Act, the United States is entitled to recover from the third party the value of medical care furnished or to be furnished by the United States to the injured party.

(2) The injured party may be required to: (a) furnish the action JAG designee any pertinent information concerning the incident; (b) notify the action JAG designee of any settlement offer from the third party or his insurer; and (c) cooperate in the prosecution of the Government's claim against the third party.

(3) The injured party may seek the advice of legal counsel concerning any possible claim he may have for personal injury and should furnish the action JAG designee the name and address of any civilian attorney consulted or retained.

(4) The injured party should not execute a release or settle any claim concerning the injury and should not furnish the third party, the third party's insurance company, or other representative of the third party, any information or signed statement without the approval of his attorney and the approval of the action JAG designee.

d. *Pursuit of claims*

(1) Action JAG designees shall, if possible, and if not contrary to the best interests of the United States, pursue to satisfactory settlement all claims coming within their authority. In those cases where administrative settlement is not possible, or is not

considered in the best interests of the United States, the action JAG designee shall determine whether the case should be closed and filed or forwarded to the Judge Advocate General for further action. However, the authority of any JAG designee to close and file cases shall be limited to those cases over which compromise authority is granted by section 2402b. Before action is taken on a file, the action JAG designee shall determine:

(a) whether the injured party has retained or intends to retain counsel;

(b) whether the tortfeasor denies liability and/or refuses to pay;

(c) in cases involving insurance, whether the insurance carrier denies liability and/or refuses to settle; and

(d) whether consideration has been given to asserting a claim under available uninsured-motorist or medical-payments coverages.

e. *Coordination with the injured party's claim*

(1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the Government's claim as an item of special damages in their client's claim or suit. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees neither may be paid by the Government (5 U.S.C. §3106) nor computed on the basis of the Government's portion of the recovery.

(3) If the injured party, or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

f. *Claims file.* In cases exceeding their settlement authority, or in other cases deemed appropriate, the action JAG designees shall take the action set forth in subsections a and b above, and shall forward the file to the Judge Advocate General for action. The claim file should contain the following information:

(1) The name, address, and occupation of each person determined to be a third party.

(2) In those cases where the third-party is a serviceman or an employee of the United States, a statement should be included regarding whether such person was acting within the scope of his official duties or employment at the time of the incident.

(3) The nature and extent of any insurance coverage of the third party with the name and address of the insurer.

(4) In vehicle accident cases where the third party is uninsured, a report as to whether any injured party, owner, driver, or passenger had uninsured-motorist coverage, whether such coverage was mandatorily offered by the insurer in accordance with a state requirement, and whether action has been taken under the financial-responsibility law of the situs.

(5) Completed copies of NAVJAG Forms 5890/12 (or equivalent forms of the other services) and a statement whether there will be any permanent disability and the degree thereof. If such forms are not presently available, then a statement to the effect that the action JAG designee will request the appropriate medical facility to forward them directly to the Judge Advocate General should be included. It shall be the responsibility of the action JAG designee to ensure that all completed copies of NAVJAG Forms 5890/12 and authorizations made by district medical or dental officers for payment for civilian care are forwarded to the Judge Advocate General in those cases where the file has been forwarded to the Judge Advocate General for action.

(6) The original or copies of all bills or statements of cost incurred where treatment is furnished by civilian facilities.

(7) A statement regarding liability of the third party. (Where liability is questionable, a brief of the law of situs applicable should be included.)

(8) A statement as to whether a "Notice of Claim" (Standard Form 96) was sent to the third party; the name, address, and phone number of the injured party's attorney, if any; and a statement as to

whether a suit has been or is likely to be instituted.

(9) A statement as to whether the injured party's attorney will protect the interests of the United States–*i.e.*, whether the Government's claim will be included in the injured party's demand or suit.

(10) A recommended disposition of the case.

g. *Waiver and compromise requests.* In cases in which a compromise or a complete waiver of the Government's claim is requested, and the claim is beyond the settlement authority of the action JAG designee, the claims file shall be forwarded to the Judge Advocate General. In addition to the information required by section 2405e, the file should also contain detailed information as to:

(1) The anticipated amount of the gross recovery.

(2) The degree and permanency of any disability and the extent to which the Government otherwise is obligated to compensate the injured party for such disability.

(3) Whether the injured party is entitled to continuing medical care at Government expense.

(4) Out of pocket expenses incurred or anticipated by the injured party, including litigation costs and counsel fees.

(5) The present and prospective assets, income, and obligations of the injured party.

(6) Any other information indicating that full collection of the Government's claim would work an undue hardship upon the injured party.

h. *Payments.* Payments of claims should be made in the form of checks, drafts, or money orders payable to the collecting organization, such as "Commandant Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and are to be forwarded for deposit by the disbursing officer serving the collecting organization. (These receipts are to be credited to appropriation accounts as designated by the Comptroller of the Navy.)

2406 MEDICAL RECORDS

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members or former members of the Navy. Commanding officers of U.S. naval hospitals and U.S. naval dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative, subject to the limitations contained in chapter 23, Manual of the Medical Department. See section 1332 of this Manual concerning certifications where necessary for litigation.

2407 NOTICE OF CLAIM

The "Notice of Claim" (Standard Form 96) shall be used when a claim under the Act is asserted against a third-party tort-feasor. Substitute forms are not authorized. Locally-prepared forms are authorized, however, for claims not based upon third-party liability.

2408 STATISTICAL REPORTS

Action JAG designees shall forward monthly reports to the Judge Advocate General of all claims for medical care costs borne by the Government, including those asserted under workers' compensation plans, medical payments insurance, and no-fault insurance, setting forth the following information:

(1) The number of claims asserted during the month;

(2) The number of recoveries made during the month (In cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected);

(3) The dollar amount of claims asserted during the month;

(4) The dollar amount of recoveries made during the month (including partial recoveries); and

(5) The total number of active claims on file at the end of the month.

Report Control Symbol JAG-5890-11 is assigned to this report.

2409 GEOGRAPHICAL LIMITATIONS–SINGLE-SERVICE RESPONSIBILITY

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. See section 2024 for single-service responsibility.

2410 RATES FOR MEDICAL CARE PROVIDED IN FEDERAL HOSPITALS

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in Appendix A-24-c.

2411 SINGLE DEMAND FOR MEDICAL CARE AND PROPERTY DAMAGE CLAIMS

An effort should be made to include all medical care and property damage claims in a single demand for payment against a third-party or his insurance company.

2412 STATUTE OF LIMITATIONS

Pursuant to the provisions of 28 U.S.C. §2415(b), a 3-year statute of limitations exists for actions arising under the Federal Medical Care Recovery Act. Accordingly, consideration should be given to forwarding files to JAG in cases where it appears that the Government's claim is not adequately protected and that settlement of the Government's claim will not occur within the time prescribed by the statute.

2413 REFERENCE MATERIAL

The following aids and reference materials are contained in Appendix A-24:

A-24-a. Executive Order 11060 of 7 November 1962, authorizing the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act;

A-24-b. Department of Justice Order Number 289-62 (as amended), pursuant to Executive Order 11060;

A-24-c. Bureau of the Budget Rate Schedules, pursuant to Executive Order 11060;

A-24-d. NAVJAG Form 5890/12, (Rev. 3-78), "Hospital and Medical Care 3rd Party Liability Case,"

A-24-e. Standard Form 96, "Notice of Claim,"

A-24-f. Reserved.

A-24-g. Department of the Navy Promissory Note.

A-24-h. Sample report on property damage claims.

PART B–PROPERTY DAMAGE CLAIMS

2414 REGULATIONS CONCERNING AFFIRMATIVE CLAIMS

Property damage claims in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. §952), as implemented by the "Joint Regulations of the General Accounting Office and Department of Justice on Federal Claims Collection Standards" (Part C of this chapter). Department of Defense Directive 5515.11 of 10 December 1966 delegates to the Secretary of the Navy and his designees the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

2415 PURSUIT, SETTLEMENT, AND TERMINATION OF CLAIMS

a. *Authority to handle claims.* Subject to section 2415b, the following officers are authorized to pursue, collect, compromise, and terminate collection action on property damage claims in favor of the United States:

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims);

(2) The commandants of all naval districts who are not served by naval legal service offices, and their district judge advocates;

(3) The officers in charge of all naval legal service offices, except naval legal service offices in countries where another service has single-service responsibility;

(4) Commanders, commanding officers, and officers in charge of overseas commands with a Navy or Marine Corps judge advocate attached, except in countries where another service has single-service responsibility.

b. *Claims over $20,000.* Claims in excess of $20,000 may not be compromised or terminated without the permission of the Department of Justice. The officers designated by section 2415a should pursue all Navy claims on behalf of the United States. If a compromise offer is obtained, or if termination is recommended, the claims file should be sent to the Judge Advocate General for referral to the Department of Justice. The file should include the information required by the Joint Regulations on Claims (Part C of this chapter).

c. *Releases.* The officers designated by section 2415a are authorized to execute a release on behalf of the United States (1) when full payment is received, (2) when a claim is under $20,000, or (3) when permission to compromise has been granted by the Department of Justice.

2416 COLLECTION OF CLAIMS

a. *Deposit of funds.* When a private party or his insurer tenders a full payment or a compromise settlement, the payment should be in the form of a check or money order made payable to the order of the collecting organization, such as the "Commandant, Twelfth Naval District" or the "Commander, U.S. Naval Forces Marianas." The check or money order should then be forwarded for deposit by the disbursing officer serving the collecting organization. Funds so collected are normally to be deposited to the Navy general fund receipt accounts as provided in the Navy Comptroller Manual.

b. *Navy Industrial Fund.* Where the loss or the cost of repairs has been borne by an industrial-commercial activity, payment should be deposited to the Navy Industrial Fund of the repairing activity. *See* Navy Comptroller Manual, paragraph 043114. When a claim is based upon loss or damage sustained by such an activity, a notation to this effect shall be included in any file forwarded to the Judge Advocate General.

c. *Rental automobile deductible damage claims.* When a rental automobile is damaged while in the possession of service personnel or Government employees on official business and a part of the damages are paid or reimbursed by the Government in accordance with Joint Travel Regulations [Volume 1, paragraph M4405-1 and Volume 2, paragraph C6101-3] officers authorized to take collection action under this Part shall endeavor to collect the amount of the Government's loss from any third-parties liable in tort. Collection action should not be directed at the personnel who rented the damaged vehicles. Collection efforts may be discontinued or claims compromised in accordance with the guidelines of Part C of this chapter.

d. *Property of nonappropriated-fund activities.* In instances of recovery because of loss or damage to property of a nonappropriated-fund activity, the amount recovered should be forwarded to the appropriate headquarters of the nonappropriated-fund activity for deposit to that activity. In those situations where the recovery involves damage to both nonappropriated-fund-activity-owned property and other Government property, *e.g.,* destruction by fire of an Exchange building resulting in damage to the building and to the Exchange-owned personalty contained therein, recovery from the tortfeasor for the Exchange-owned personalty should be forwarded to the nonappropriated-fund activity. Recovery for the building damage should be deposited to the Navy general fund receipt accounts as indicated in § 2416a. Appropriate documentation should be included in every claims file.

2417 REPAIR OF GOVERNMENT PROPERTY BY THE TORT-FEASOR

In some cases, a person who has damaged Government property (or his insurer) offers to repair the property or to arrange for its repair. The commanding officer or officer in charge of the activity concerned is authorized to accept such an offer if he considers it to be in the best interests of the Government. The commanding officer or officer in charge is also authorized to assure the private party that a full release of the claim of the United States will be executed (a) when the repairs are completed to the Government's satisfaction, and (b) when all repair bills have been paid by the private party. Such a procedure may be followed without the prior approval of the Judge Advocate General or his designee, and without first submitting an investigative report. When the investigative report is submitted, however, it shall contain a statement of the cost of the repairs and a statement by the commanding officer or officer in charge that the property has been satisfactorily repaired, and that all bills for repair have been paid.

2418 REFERRAL OF CASES TO THE DEPARTMENT OF JUSTICE OR GAO

Only the Judge Advocate General shall refer claims to the Department of Justice or to the General

Accounting Office. Before recommending such action, the command handling the claim should assure that full collection efforts (as required by part C of this chapter) have been completed.

2419 STATUTE OF LIMITATIONS

There is a 3-year statute of limitation on affirmative Government claims "founded upon a tort." 28 U.S.C. §2415(b). Uncollected affirmative claims should therefore be forwarded to the Judge Advocate General soon enough for timely referral to the Department of Justice. Any installment-payment agreement that will run beyond the statutory period should include a confess-judgment clause (*see* Appendix section A-24-g).

2420 REPORTS

The officers designated by section 2415a (2)-(4) shall make a quarterly report on property damage claims to the Judge Advocate General. The report should include the following figures:

(a) Number of claims asserted

(b) Dollar amount of claims asserted

(c) Number of claims collected

(d) Dollar amount of claims collected.

Report Control Symbol JAG 5890-3 is assigned to this report.

PART C–JOINT REGULATIONS ON CLAIMS COLLECTION

2421 JOINT REGULATIONS OF THE GENERAL ACCOUNTING OFFICE AND THE DEPARTMENT OF JUSTICE ON FEDERAL CLAIMS COLLECTION STANDARDS

Joint regulations of the General Accounting Office and the Department of Justice on Federal Claims Collection standards are quoted as follows:

TITLE 4–ACCOUNTS

CHAPTER 11–FEDERAL CLAIMS
COLLECTION STANDARDS
(GENERAL ACCOUNTING OFFICE–
DEPARTMENT OF JUSTICE)

Part

101 SCOPE OF STANDARDS

102 STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

103 STANDARDS FOR THE COMPROMISE OF CLAIMS

104 STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

105 REFERRALS TO GAO OR FOR LITIGATION

PART 101–SCOPE OF STANDARDS

Sec.

101.1 PRESCRIPTION OF STANDARDS

101.2 OMISSIONS NOT A DEFENSE

101.3 FRAUD, ANTITRUST, AND TAX CLAIMS EXCLUDED

101.4 COMPROMISE, WAIVER, OR DISPOSITION UNDER OTHER STATUTES NOT PRECLUDED

101.5 CONVERSION CLAIMS

101.6 SUBDIVISION OF CLAIMS NOT AUTHORIZED

101.7 REQUIRED ADMINISTRATIVE PROCEEDINGS

101.8 REFERRAL FOR LITIGATION

101.1 PRESCRIPTION OF STANDARDS

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section

3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, prescribe standards for the administrative collection, compromise, termination of agency collection action, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Manual for the Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to section 3 of the Federal Claims Collection Act of 1966 will be reviewed by the General Accounting Office as a part of its audit of the agency's activities.

101.2 OMISSIONS NOT A DEFENSE

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

101.3 FRAUD, ANTITRUST, AND TAX CLAIMS EXCLUDED

The standards set forth in this chapter do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, matters submitted to the Department of Justice for consideration without compliance with the regulations in this chapter because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations in this chapter if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted. Tax claims, as to which differing exemptions, administrative consideration, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

101.4 COMPROMISE, WAIVER, OR DISPOSITION UNDER OTHER STATUTES NOT PRECLUDED

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, providing for the compromise, termination of collection action, or waiver in whole or in part of such claim. See, *e.g.*, "The Federal Medical Care Recovery Act," 76 Stat. 593, 42 U.S.C. 2651, *et seq.*, and applicable regulations, 28 CFR 43.1, *et seq.* The standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by compromise or termination of collection action (other than by waiver pursuant to statutory authority) under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, to the extent such other statutes or authorized regulations issued pursuant thereto do not establish standards governing such matters.

101.5 CONVERSION CLAIMS

The instructions contained in this chapter are directed primarily to the recovery of money on behalf of the Government and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

101.6 SUBDIVISION OF CLAIMS NOT AUTHORIZED

A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than $20,000, exclusive of interest, for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, 80 Stat. 308.

101.7 REQUIRED ADMINISTRATIVE PROCEEDINGS

Nothing contained in this chapter is intended to require an agency to omit or foreclose administrative proceedings required by contract or by law.

101.8 REFERRAL FOR LITIGATION

As used in this chapter referral for litigation means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

PART 102–STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

102.1 AGGRESSIVE AGENCY COLLECTION ACTION

102.2 DEMAND FOR PAYMENT

102.3 COLLECTION BY OFFSET

102.4 REPORTING DELINQUENT DEBTS TO COMMERCIAL CREDIT BUREAUS

102.5 PERSONAL INTERVIEW WITH DEBTOR

102.6 CONTACT WITH DEBTOR'S EMPLOYING AGENCY

102.7 SUSPENSION OR REVOCATION OF LICENSE OR ELIGIBILITY

102.8 LIQUIDATION OF COLLATERAL

102.9 COLLECTION IN INSTALLMENTS

102.10 EXPLORATION OF COMPROMISE

102.11 INTEREST

102.12 ANALYSIS OF COSTS

102.13 DOCUMENTATION OF ADMINISTRATIVE COLLECTION ACTION

102.14 AUTOMATION

102.15 PREVENTION OF OVERPAYMENTS, DELINQUENCIES AND DEFAULTS

102.16 ADDITIONAL ADMINISTRATIVE COLLECTION ACTION

102.1 AGGRESSIVE AGENCY COLLECTION ACTION

The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, his agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency.

102.2 DEMAND FOR PAYMENT

Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. In the initial notification the debtor should be informed of the basis for the indebtedness, the applicable requirements or policies for charging interest and reporting delinquent debts to commercial credit bureaus, and the date by which payment is to be made (due date). The due date should be specified and, normally, should not be more than 30 days from the date of the initial notification. Three progressively stronger written demands, at not more than 30-day intervals, will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require further rebuttal. Further exceptions may be made where it is necessary to protect the Government's interests (e.g. the statute of limitations (28 U.S.C. 2415)). Agencies should respond promptly to communications from the debtor. Agencies should advise debtors who dispute the debt to furnish available evidence to support their contentions.

102.3 COLLECTION BY OFFSET

Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C. 5514. Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as

amended, 31 U.S.C. 227. Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

102.4 REPORTING DELINQUENT DEBTS TO COMMERCIAL CREDIT BUREAUS

Agencies shall develop and implement procedures for reporting delinquent debts to commercial credit bureaus. In the absence of a different rule prescribed by statute, contract, or regulation, a debt is considered delinquent if not paid by the due date specified in the initial notification, unless satisfactory payment arrangements are made by the due date. Agency procedures for reporting delinquent debts to credit bureaus must give due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, which include the following requirements: (a) Promulgate a "routine use" for the disclosure; (b) keep an accounting for disclosures and make them available to the debtor; (c) provide the credit bureau with corrections and notations of disagreement by the debtor; and (d) make reasonable efforts to assure that the information to be reported is accurate, complete, timely, and relevant. Prior to exercising the option of reporting delinquent debts to commercial credit bureaus, agencies should send a demand letter advising the debtor that such reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed.

102.5 PERSONAL INTERVIEW WITH DEBTOR

Agencies will undertake personal interviews with their debtors when this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

102.6 CONTACT WITH DEBTOR'S EMPLOYING AGENCY

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C.

5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965, 3 CFR, 1965 Supp., p. 130 (30 F.R. 6469).

102.7 SUSPENSION OR REVOCATION OF LICENSE OF ELIGIBILITY

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim and the debtor will be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time and the debtor will be so advised. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

102.8 LIQUIDATION OF COLLATERAL

Agencies holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a non-judicial foreclosure should do so by such procedures if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

102.9 COLLECTION IN INSTALLMENTS

Claims, with interest in accordance with section 102.10 should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $10 per month should be accepted in only the most unusual circumstances. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice form USA-70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

102.10 EXPLORATION OF COMPROMISE

Agencies will attempt to effect compromises (preferably during the course of personal interviews), of claims of $20,000 or less exclusive of interest, in accordance with the standards set forth in Part 103 of this chapter in all cases in which it can be ascertained that the debtor's financial ability will not permit payment of the claim in full, or in which the litigative risks or the costs of litigation dictate such action.

102.11 INTEREST

In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual. When a debt is paid in installments, the installment payments will first be applied to the payment of accrued interest and the principal, in accordance with the so-called "U.S. Rule," unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See Rodgers v. United States, 332 U.S. 371.

102.12 ANALYSIS OF COSTS

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

102.13 DOCUMENTATION OF ADMINISTRATIVE COLLECTION ACTION

All administrative collection action should be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation should be retained in the appropriate claims file.

102.14 AUTOMATION

Agencies should automate their debt collection operations to the extent that it is cost effective and feasible.

102.15 PREVENTION OF OVERPAYMENTS, DELINQUENCIES AND DEFAULTS

Agencies should establish procedures to identify the causes of overpayments, delinquencies and defaults and the corrective actions needed. One action that should be considered is the reporting of debts or loans, when first established, to commercial credit bureaus.

102.16 ADDITIONAL ADMINISTRATIVE COLLECTION ACTION

Nothing contained in this chapter is intended to preclude the utilization of any other administrative remedy which may be available.

PART 103–STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

103.1 SCOPE AND APPLICATION

103.2 INABILITY TO PAY

103.3 LITIGATIVE PROBABILITIES

103.4 COST OF COLLECTING CLAIM

103.5 ENFORCEMENT POLICY

103.6 JOINT AND SEVERAL LIABILITY

103.7 SETTLEMENT FOR A COMBINATION OF REASONS

103.8 FURTHER REVIEW OF COMPROMISE OFFERS

103.9 RESTRICTIONS

103.1 SCOPE AND APPLICATION

The standards set forth in this part apply to the compromise of claims, pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, which do not exceed $20,000 exclusive of interest. The head of an agency or his designee may exercise such compromise authority with respect to claims for money or property arising out of the activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that office for litigation.

103.2 INABILITY TO PAY

A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of (a) the debtor's inability to pay the full amount within a reasonable time, or (b) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings. The agency will give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take. Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in section 102.8 of this chapter, in every case in which this is possible. If the agency's files do not contain reasonable up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Forms such as Department of Justice form DJ-35 may be used for this purpose. Similar data may be obtained from corporate debtors by resort to balance sheets and such additional data as seems required.

103.3 LITIGATIVE PROBABILITIES

A claim may be compromised pursuant to this part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight should be given to the probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. Cf. 28 U.S.C. 2412, as amended by Public Law 89-507, 80 Stat. 308.

103.4 COST OF COLLECTING CLAIM

A claim may be compromised pursuant to this part if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection having regard for the time which it will take to effect collection. Cost of collecting may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

103.5 ENFORCEMENT POLICY

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

103.6 JOINT AND SEVERAL LIABILITY

When two or more debtors are jointly and severally liable collection action will not be withheld against one such debtor until the other or others pay their proportionate share. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that compromise with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

103.7 SETTLEMENT FOR A COMBINATION OF REASONS

A claim may be compromised for one or for more than one of the reasons authorized in this part.

103.8 FURTHER REVIEW OF COMPROMISE OFFERS

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

103.9 RESTRICTIONS

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

PART 104–STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.

104.1 SCOPE AND APPLICATION

104.2 SUSPENSION OF COLLECTION ACTIVITY

104.3 TERMINATION OF COLLECTION ACTIVITY

104.4 TRANSFER OF CLAIMS

104.1 SCOPE AND APPLICATION

The standards set forth in this part apply to the suspension or termination of collection action pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, on claims which do not exceed $20,000 exclusive of interest. The head of an agency or his designee may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

104.2 SUSPENSION OF COLLECTION ACTIVITY

Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim having consideration for its size and the amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and license records; state and local governmental agencies; district directors of Internal Revenue; other Federal agencies; employers, relatives, friends; credit agency skip locate reports and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as Public Law 89-505, 80 Stat. 304, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of his missing status. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is unable to make payments on the Government's claim or effect a compromise thereof at the time but his future prospects justify retention of the claim for periodic review and action and (a) the applicable statute of limitations has been tolled or started running anew or (b) future collection can be effected by offset notwithstanding the statute of limitations.

104.3 TERMINATION OF COLLECTION ACTIVITY

The head of an agency or his designee may terminate collection activity and consider the agency's file on the claim closed under the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings.

(b) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset notwithstanding the bar of the statute of limitations is too remote to justify retention of the claim.

(c) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(e) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

104.4 TRANSFER OF CLAIMS

When an agency has doubt as to whether collection action should be suspended or terminated on a claim it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under section 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

PART 105–REFERRALS TO GAO OR FOR LITIGATION

Sec.

105.1 PROMPT REFERRAL

105.2 CURRENT ADDRESS OF DEBTOR

105.3 CREDIT DATA

105.4 REPORT OF PRIOR COLLECTION ACTIONS

105.5 PRESERVATION OF EVIDENCE

105.6 MINIMUM AMOUNT OF REFERRALS TO THE DEPARTMENT OF JUSTICE

105.7 REFERRALS TO GAO

105.1 PROMPT REFERRAL

Claims on which collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, will be referred to the General Accounting Office in accordance with R.S. 236, as amended, 31 U.S.C. 71, or to the Department of Justice, if the agency concerned has been granted an exception from referrals to the General Accounting Office. Such referrals should be made as early as possible consistent with agressive agency collection action and the observance of the regulations contained in this chapter and in any event well within the time limited for bringing a timely suit against the debtor.

105.2 CURRENT ADDRESS OF DEBTOR

Referrals to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the General Accounting Office, and referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown will be accompanied by a listing of the prior known addresses of such a party and a statement of the steps taken to locate him.

105.3 CREDIT DATA

(a) Claims referred to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Such credit data may take the form of (1) a commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor.

(c) Such credit data may be omitted if (1) a surety bond is available in an amount sufficient to satisfy the claim in full, (2) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy its claim in full, (3) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment, (4) the debtor is in bankruptcy or receivership, or (5) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage.

105.4 REPORT OF PRIOR COLLECTION ACTIONS

A checklist or brief summary of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral to the General Accounting Office or to the Department of Justice. If any of the administrative collection actions enumerated in Part 102 of this chapter have been omitted, the reason for their omission will be given with the referral. The General Accounting Office and the Department of Justice may return or retain claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

105.5 PRESERVATION OF EVIDENCE

Care will be taken to preserve all files, records and exhibits on claims referred or to be referred to the General Accounting Office, or to the Department of Justice for litigation.

105.6 MINIMUM AMOUNT OF REFERRALS TO THE DEPARTMENT OF JUSTICE

Agencies will not refer claims of less than $600, exclusive of interest, for litigation unless (a) referral is important to a significant enforcement policy or (b) the debtor has not only the clear ability to pay the claim but the Government can effectively enforce payment having due regard to the exemptions available to the debtor under State or Federal law and the judicial remedies available to the Government.

105.7 REFERRALS TO GAO

Referrals of claims to the General Accounting Office will be in accordance with instructions, including monetary limitations, contained in the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies.

Chapter XXV

AUTHORITY OF ARMED FORCES PERSONNEL TO PERFORM NOTARIAL ACTS

PART A–OUTLINE OF FEDERAL AND NON-FEDERAL AUTHORITY

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2502 FEDERAL AUTHORITY TO ADMINISTER OATHS, AND THE LEGAL EFFECTIVENESS OF SUCH OATHS

- a. Federal authority to administer oaths
- b. Legal effectiveness

2503 FEDERAL AUTHORITY TO PERFORM OTHER NOTARIAL ACTS, AND THE LEGAL EFFECTIVENESS OF SUCH ACTS

- a. Federal authority
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2508 ACKNOWLEDGMENTS

2509 SWORN INSTRUMENTS

2510 SPECIAL INSTRUCTIONS FOR ACKNOWLEDGMENTS AND SWORN INSTRUMENTS (SUMMARY OF STATE LAWS)

PART A–OUTLINE OF FEDERAL AND NON-FEDERAL AUTHORITY

2501 SCOPE

This chapter contains a compilation of existing laws and regulations concerning the authority of the military members of the Armed Forces to administer oaths; to take affidavits, sworn statements, or depositions, to make acknowledgments; and to perform other notarial acts.

2502 FEDERAL AUTHORITY TO ADMINISTER OATHS, AND THE LEGAL EFFECTIVENESS OF SUCH OATHS

a. *Federal authority to administer oaths*

(1) The following United States Armed Force members on active duty may administer oaths for purposes of military administration, including military justice (article 136, UCMJ; 10 USC 936);

(a) All judge advocates of the Army, Navy, Air Force, and Marine Corps.

(b) All law specialists (United States Coast Guard).

(c) All summary courts-martial.

(d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(e) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(f) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(g) All other persons designated by regulations of the Armed Forces or by statute.

(2) The following United States Armed Forces members on active duty may administer oaths to any person when it is necessary in the performance of their duties (article 136, UCMJ; 10 USC 936):

(a) President, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(b) President and counsel for the court of any court of inquiry.

(c) All officers designated to take a deposition.

(d) All persons designated to conduct an investigation.

(e) All recruiting officers.

(f) All other persons designated by regulations of the Armed Forces or by statute.

(3) Pursuant to the authority under Article 136(a)(7) of the UCMJ to extend notarial powers by department regulations, the following officers of the Navy and the Marine Corps on active duty, including retired and reserve officers, are so authorized:

(a) Officers certified by the Judge Advocate General of the Navy under Article 26 or Article 27 of the UCMJ.

(b) Officers of the grade of lieutenant commander or major and above.

(c) Executive officers of the Navy and the Marine Corps.

(d) Administrative officers of Marine Corps aviation squadrons.

(e) Officers of the Marine Corps with the Military Occupational Speciality (MOS) of 4430, while assigned as legal administrative officers.

(4) Pursuant to the authority under Article 136(b)(6) of the UCMJ to extend notarial powers by departmental regulations, the following persons of the Navy and Marine Corps on active duty, including retired and reserve officers, are so authorized:

(a) Officers designated as Casualty Assistance Calls Program Officers while so acting.

(b) All persons empowered to authorize a search, for any purpose relating to such search authorization.

(5) Any United States Armed Force commissioned officer of any Regular or Reserve component, whether or not on active duty, may administer:

(a) Oath of enlistment (10 USC 502 and 1031).

(b) Oath required for appointment of any commissioned or warrant officer grade (10 USC 1031).

(c) Any other oath required by law in connection with enlistment or appointment of any person in any United States Armed Force (10 USC 1031).

b. *Legal effectiveness.* Oaths administered under these authorities are proper and legally effective for the purposes stated.

2503 FEDERAL AUTHORITY TO PERFORM OTHER NOTARIAL ACTS, AND THE LEGAL EFFECTIVENESS OF SUCH ACTS

a. *Federal authority.* In addition to administering oaths for the purposes described in 2502a above, United States Armed Force members listed in 2502a(1) have general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by members of any of the Armed Forces, wherever they may be, by persons serving with, employed by, or accompanying the Armed Forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to the UCMJ outside the United States.

b. *Legal effectiveness for Federal purposes.* Federal notarial acts performed under this authority are proper and legally effective for matters wholly connected with military administration, and are generally considered to be legally effective for all other Federal purposes.

c. *Legal effectiveness for non-Federal purposes.* The legal effectiveness of any notarial act generally is dependent on the laws of the jurisdiction in which the instrument is to be used or presented. This jurisdiction determines who may perform notarial acts, and the conditions under which they may be performed. Federal authority contained in Article 136, UCMJ (10 USC 936) for the performance of notarial acts by certain United States Armed Force members may or may not be accepted as adequate compliance with the requirements of the jurisdiction in which the instrument is to be used or presented.

d. *Formats.* For most Federal purposes the formats for acknowledgments and sworn instruments should be as set forth in Appendix A-25-a and A-25-b respectively.

2504 NON-FEDERAL AUTHORITY TO PERFORM NOTARIAL ACTS, AND THE LEGAL EFFECTIVENESS OF SUCH ACTS

a. *Non-Federal authority.* Laws of almost all States, the District of Columbia, and United States possessions, territories, and commonwealths authorize certain United States Armed Force members to perform one or more of the following notarial acts for United States Armed Force members, their dependents, and accompanying civilians:

(1) Administer oaths.

(2) Take affidavits.

(3) Take sworn statements.

(4) Take depositions.

(5) Take acknowledgments.

b. *Determinations.* Before exercising notarial authority, United States Armed Force members should determine:

(1) The State or States where the instrument is to be used or presented.

(2) Who has authority to perform the particular notarial function (consult the listing in section 2510).

(3) For whom the particular notarial act may be performed under the laws of the jurisdiction or jurisdictions involved (consult the listing in section 2510).

c. *Legal effectiveness.* This must be tested by the statutory requirements of the State or States in which the instrument is to be used. When a single instrument requiring acknowledgment is to be used in more than one jurisdiction, the acknowledgment must comply with the laws of every jurisdiction in which it is to be used. Although notarial functions performed by United States Armed Force members are valid when authorized by the jurisdiction in which the instrument is to be used, it is advisable in the United States to use a locally appointed notary public with seal and when abroad to use a United States consul.

2505 UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT

Several states have recently enacted section 39-1A-1 of the Uniform Recognition of Acknowledgments Act. In many instances the enactment of section 39-1A-1 has not been accompanied by repeal or revision of existing statutory laws governing the power to perform notarial acts outside the state, resulting in some overlapping authorization to perform such acts. Reference is made in the alphabetical listing of states contained in section 2510 to those jurisdictions which have enacted section 39-1A-1, as well as specifying any additional statutes, granting similar powers, which are still operative. Section 39-1A-1 provides as follows:

§ 39-1A-1. "Notarial acts" defined; who may perform notarial acts outside State for use in State.

For the purposes of this article, "notarial acts" means acts which the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this State for use in this State with the same effect as if performed by a notary public of this State by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by laws and regulations of this State:

(1) A notary public authorized to perform notarial acts in the place in which the act is performed;

(2) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

(3) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;

(4) A commissioned officer in active service with the Armed Forces of the United States and any other person authorized by regulation of the Armed Forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the Armed Forces of the United States or any other person serving with or accompanying the Armed Forces of the United States; or

(5) Any other person authorized to perform notarial acts in the place in which the act is performed. (1971, c.1.).

PART B–NON-FEDERAL STATUTES

2506 INTRODUCTION

This part explains who is authorized to execute notarial acts, for whom, and how they may be accomplished for use in each state, the District of Columbia, and United States possessions, territories, and commonwealths. United States Armed Force members should use the formats contained in Appendix A-25-a to avoid the ineffective execution of legal instruments. When available, a legal assistance officer should be consulted. Any instruction from a civilian attorney who prepares and forwards an instrument for execution should be followed carefully.

2507 GENERAL INSTRUCTIONS FOR ACKNOWLEDGMENTS AND SWORN INSTRUMENTS

a. *Seal of person executing document.* Some state statutes require that instruments conveying real or personal property be executed under seal. Therefore, it is recommended that, immediately preceding the signature of the person selling property or appointing an attorney in fact to do so, there be inserted the statement "Witness my hand and seal," or words to that effect. In most jurisdictions, the typing, printing, or writing of the word "(SEAL)" or the symbol

"(LS)" after the signature will complete the sealing of the instrument.

b. *Witnesses.* All instruments which may affect title to real estate must be acknowledged, and since some states also require witnesses, they should also be witnessed by three persons (see Appendix A-25-a). The name, grade or rate, branch of service, Armed Force service number, and permanent home address of each witness should be typed or printed below his signature.

c. *By whom acknowledgments or sworn instruments may be taken.* The majority of state statutes authorize any commissioned officer with the grade of ensign (or second lieutenant) or higher to take acknowledgments and sworn instruments. Therefore, in the alphabetical listing of states contained in section 2510, the words "commissioned officer" are used to denote officers of the grade of ensign, second lieutenant, or higher. Where these statutes require that the commissioned officer have a higher grade, or where they permit commissioned, non-commissioned, or petty officers of a lower grade or rate, to perform these acts, or where they restrict the authority to officers to perform certain functions, such facts are stated under the alphabetical listing of states in section 2510.

d. *When, where, and for whom acknowledgments and sworn instruments may be taken.* Non-federal statutes vary to such an extent that it is necessary to consult the alphabetical listing of states contained in section 2510 to determine when, where, and for whom acknowledgments and sworn instruments may be taken.

e. *Seal of officer taking acknowledgments or sworn instruments.* Under provisions of article 136, UCMJ (10 USC 936), and of all state statutes, the signature of the officer taking an acknowledgment or sworn instrument is *prima facie* evidence of his authority, and an impressed or raised seal is not required, but see section 2507 concerning the signature of the person executing the document.

f. *Manner of administering oaths and taking acknowledgments.* A person taking an acknowledgment or a sworn instrument should take the acknowledgment or administer the oath in person and in the presence of the person whose acknowledgment or oath is being taken. The foregoing is mandatory since both civil and criminal penalties may attach to performing these acts *in absentia.*

2508 ACKNOWLEDGMENTS

An acknowledgment, as used in this chapter, includes the certificate or written evidence of the act of acknowledgment made by the officer, as well as the act itself. Technically, it is a formal declaration or admission before a properly authorized official by a person who has executed an instrument that such instrument is his act or deed.

The purpose of acknowledgments generally is to entitle the instrument to be recorded or to authorize its introduction in evidence without further proof of its execution.

Acknowledgments relate primarily to written instruments affecting land. Statutes require that deeds, mortgages, leases (particularly those over a certain length of years), powers of attorney to convey land or an interest therein, etc., be acknowledged. (The format for acknowledgments is contained in Appendix A-25-a).

2509 SWORN INSTRUMENTS

The term "sworn instruments," as used in this chapter means written declarations signed by a person who declared under oath before a properly authorized official that the facts set forth therein are true to the best of his knowledge and belief. They include affidavits, sworn statements, and depositions. They are comprised of three distinct parts:

(1) Statement of *Venue* (place where notarial act is performed).

(2) *Body* of instrument.

(3) *Jurat* (Clause stating that instrument was sworn to, subscribed, etc., and the date of such act).

Names of these parts, indicated in the format by underscoring, should not appear in the actual instrument.

The purpose of sworn instruments generally is to make a formal statement under oath of certain facts which are known to the person making such statement. See Appendix A-25-b for a suggested format.

2510 SPECIAL INSTRUCTIONS FOR ACKNOWLEDGMENTS AND SWORN INSTRUMENTS (SUMMARY OF STATE LAWS)

This section contains a summary of the jurisdictional requirements for acknowledgments arranged in alphabetical order. Unless otherwise indicated, the term "commissioned officer" as used in this section means an officer of the grade of ensign or above in the Navy or Coast Guard or an officer of the grade of second lieutenant or above in the Army, Air Force or Marine Corps. Unless otherwise indicated, phrases such as "members of the Armed Forces" do not include spouses or other dependents of such members, nor civilians employed by the Armed Forces.

ALABAMA Code of Ala., Title 47, Sec. 27 (1958).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of any person, military or otherwise, at any place outside of the State of Alabama.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

ALASKA Alask. Stats., Code of Civil Proc., Title 9, Sec. 09.65.010.

The commanding officer of a United States Coast Guard vessel is empowered to administer oaths or affirmations within the State. No other statutory authority exists for commissioned officers to take acknowledgments, oaths or sworn instruments.

ARIZONA Enacted Uniform Recognition of Acknowledgments Act as Ariz. Rev. Stats. Ann., Title 33, Chap. 4, Art. 5, Sections 33-501 to 508 (1971). Former Ariz. Rev. Stats. Ann., Sec. 35-11 (Supp., 1968) is repealed.

ARKANSAS Ark. Stat. Ann., Sec. 49-111 and 40-108 (Supp., 1967).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for persons serving in or with the Armed Forces of the United States or their dependents at any place.

2. *Oaths and Sworn Instruments.* Any person in the Armed Forces may take oath to any affidavit before any commissioned officer of any branch of service.

CALIFORNIA Ann. Cal. Codes, Civil Code, Title 4, Art. 3, Sec. 1183.5 (Supp., 1975).

1. *Acknowledgments.* Any officer on active duty in the Armed Forces having the general powers of a notary public pursuant to 10 U.S.C. Sec. 936–may perform all notarial acts for any person serving in the Armed Forces of the United States, wherever they may be, or for any spouse of a person serving in the Armed Forces wherever they may be, and for any person serving with, employed by, or accompanying such Armed Forces outside the United States and outside the Canal Zone, Puerto Rico, Guam and the Virgin Islands.

2. *Oath and Sworn Instruments.* Requisities same as for acknowledgments.

CANAL ZONE Canal Zone Code, Title 4, Sec. 725.

1. *Acknowledgments.* (a) A commissioned officer of the Army or Air Force on active duty with the JAG's Department, (b) a law specialist in the Navy or Coast Guard, (c) a staff judge advocate, acting staff judge advocate, adjutant, assistant adjutant, personnel adjutant, or commanding officer of a command, (d) a commanding officer or executive officer of a ship, shore station or establishment and any officer of or above the grade of lieutenant senior grade on active duty with the Navy or Coast Guard, or (e) an officer of or above the grade of captain on active duty with the Marine Corps may take acknowledgments at any place of any person serving in or with the Armed Forces of the United States or of the spouse of a member of the Armed Forces.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

COLORADO Colo. Rev. Stat. Ann., Sec. 24-12-104, 38-30-127, and 12-55-203 (1973).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Forces members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) any person who is outside said limits by permission, assignment or direc-

tion of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision is made for spouses or dependents under Sections 24-12-104 and 38-30-127, but paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in Section 12-55-203.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

CONNECTICUT C. G.S.A., Secs. 1-24, 1-38 and 27-137 (1975).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for those serving in or with the United States Armed Forces or their dependents at any place.

2. *Oaths and Sworn Instruments.* The following officers may administer oaths to persons serving with or in the United States Armed Forces or their spouses at any place: Judge advocates of the Army, Navy, Air Force, and Marine Corps; law specialists of the Coast Guard, adjutants, assistant adjutants, acting adjutants, and personnel adjutants, commanding officers, executive officers and officers whose rank is lieutenant commander or major, or above. No provision made for dependents other than spouses.

DELAWARE 25 Del. Code Sec. 130 (1953).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia at any time; and (c) other persons outside the above limits by permission, assignment, or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provisions made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

DISTRICT OF COLUMBIA

No local statutory authority for any United States Armed Force member to take acknowledgments, oaths, or sworn instruments. (See section 2503 above for Federal authority to perform these functions.)

FLORIDA F. S. A., Sec. 92.51 (effective July 1, 1977).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments, both within or without in the United States, for (a) a member of the Armed Forces of the United States, (b) the spouse of such member and (c) a person whose duties require his presence with the Armed Forces of the United States. No provision made for dependents other than spouses of United States Armed Forces members.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

GEORGIA Ga. Code Ann., Title 71, Secs. 401 and 404 (1964).

1. *Acknowledgments:*

a. Section 401 provides that all commissioned officers (without restriction as to grade) are *ex officio* notaries public for the purpose of taking acknowledgments of any person, at any place, concerning Georgia property only.

b. Section 404 provides that commissioned officers in active service may take acknowledgments generally of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) other persons outside said limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments:*

a. Section 401 requisities same as for acknowledgments when oaths and sworn instruments concern Georgia property only.

b. Section 404 requisites same as for acknowledgments.

GUAM Govt. Code, Sec. 22200 (1961).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) on active duty

authorized by UCMJ to administer oaths may take acknowledgments of any person on active duty.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

HAWAII Hawaii Rev. Stat., Sec 502-47 (1968), and Ch. 30, Sec. 30-222 (1971).

1. *Acknowledgments.* Any officer authorized by Congress to exercise the powers of a notary public (see section 2503 above for federal authority to perform these functions) may take acknowledgments of (a) any person in the United States Armed Forces at any place, and (b) any person without the United States.

2. *Oaths and Sworn Instruments.* No local authority granted for officers to take oaths or sworn instruments.

IDAHO Idaho Code, Sec. 55-705 (Supp., 1967).

1. *Acknowledgments.* Any officer (without restrictions as to grade) of any component of any branch of the Armed Forces of the United States as may be designated to take a deposition may take the acknowledgment at any place of persons in any of the Armed Forces or otherwise subject to military law, and their wives and dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

ILLINOIS S. H. A., Ch. 30, Sec. 19 (1969) and Ch. 101, Sec. 2 (Supp., 1968), and Ch. 30, Sec. 30-222 (1971).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments, at any place, for those serving in or with United States Armed Forces and for their spouses or former spouses. No provision made for dependents other than spouses or former spouses under Ch. 30, Section 19 and Ch. 101, Section 2 but paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in Ch. 30, Section 30-222.

2. *Oaths and Sworn Statements.* Commissioned officers in active service may take all oaths or sworn instruments, at any place, from any person whether or not connected with the United States Armed Forces.

INDIANA Burns Ind. Stat. Ann., Title 32-2-3-1 (1975).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for (a) those serving in or with the United States Armed Forces at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) any person who is outside said limits by permission, assignment or direction of any department or office of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

IOWA I.C.A., Sec. 558.26; Rules for Civil Procedure, Rule 153 (1950).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for those serving in or with United States Armed Forces at any place. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Depositions may be taken by any commissioned officer under whose command the person giving the deposition is serving, or by any commissioned officer of the Judge Advocate General Department or Corps. There is no restriction as to the grade of the officer.

KANSAS K. S. A., 58-2216c and d (1964), and 53-301 (1972).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of any person or his spouse or dependents if such person is either (a) a member of the Armed Forces of the United States; (b) a merchant seaman outside the limits of the 50 States and the District of Columbia; or (c) is outside said limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in K. S. A., 53-301.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

KENTUCKY Ky. Rev. Stat. Ann., Sec. 384.080 (1969) and Sec. 465.110 (1971).

1. *Acknowledgments.* Commissioned officers in active service (without restriction as to grade) may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the United States and (c) others outside said limits by permission, assignment or direction of any department or official of the United States Government, at any time. No provision made for spouses or dependents by the terms of the statute itself. Note however, that the Attorney General of Kentucky has stated that the statute also applies to dependents of military personnel and to civilian employees of the Armed Forces and their dependents who are outside the limits of the United States (OAG 63-86). Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in Ky. Rev. Stat. Ann., Section 463.110.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledments.

LOUISIANA L.S.A.-R.S., Sec., 35.7 (West 1964).

1. *Acknowledgments.* Commissioned officers in active service (without restriction as to grade) may take acknowledgments of persons serving in or with the United States Armed Forces, at any place; acknowledgments authorized for others, including spouses, only outside the United States and the District of Columbia.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NOTE: Sec. 35.11 provides as follows:

> "Whenever notaries pass any acts they shall give the marital status of all parties to the act, viz;
>
> If either or any party or parties are men, they shall be described as single, married, or widower. If married or widower, the Christian and family name of the wife shall be given. If either or any party or parties are women, they shall be described as single, married, or widow. If married or widow, their Christian and family name shall be given, adding that she is the wife or widow of the husband's. . .name."

MAINE M.R.S.A., Title 4, Sec. 1011 (1969).

This section incorporates paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act with regard to acknowledgments, oaths and sworn instruments. Previous authority contained in Title 33, section 203 has been repealed.

MARYLAND Ann. Code of Md., Art. 18, Secs. 11 and 15 (1957).

1. *Acknowledgments.* Commissioned officers in active service of the Armed Forces of the United States may take acknowledgments of (a) any persons serving in or with the Armed Forces of the United States, and their spouses or dependents, at any place; (b) any persons serving as merchant seamen outside the 50 States and the District of Columbia; or (c) any persons outside the 50 States and the District of Columbia by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for acknowledgments of spouses or dependents of persons described in "(b)" or "(c)" of this paragraph.

2. *Oaths and Sworn Instruments.* Any commissioned officer in active service of the Armed Forces of the United States may take oaths and sworn instruments for (a) any member of the Armed Forces of the United States; (b) any persons serving as merchant seamen outside the 50 States and the District of Columbia; or (c) any person outside the 50 States and the District of Columbia by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

MASSACHUSETTS Ann. Laws of Mass. Vol. 7A, Ch. 222, Sec. 11 (1955).

1. *Acknowledgments.* Commissioned officers may take acknowledgments of persons serving in or with the Armed Forces of the United States and their dependents at any place. In case of dependents, the officer's certificate must state name and serial number of the person serving in the Armed Forces on whom the person is dependent.

2. *Oaths and Sworn Instruments.* No local authority for any United States Armed Forces member to take oaths or sworn instruments.

MICHIGAN Mich. Stats. Ann., Sec. 27A1440 (Supp. 1969), and Sec. 26.607(1) *et seq.* (1970).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments, at any place for persons serving in or with the Armed Forces of the United States or civilian employees thereof or in each case their spouses and dependents. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Mich. Stats. Ann., Sec. 26.607(1) *et seq.*

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments, except that here Section 27A1440 uses the word "dependents" instead of the words "spouses and dependents"which occur in the portion relating to acknowledgments.

NOTE: The oath prescribed is more extensive than the jurat example contained in Appendix A-25-b. It is more in the nature of a verification and should therefore contain the following: "made oath that he or she knows the contents thereof and the same is true of his own knowledge except as to matter stated therein to be on information and belief, and as to those matters he or she believes is to be true."

MINNESOTA Min. Stats. Ann., Sec. 358.32 (1973).

Section 358.32 enacts the provisions of the Uniform Recognition of Acknowledgments Act. Previous authority contained in Section 358.27 has been repealed.

MISSISSIPPI Miss. Code Ann., Sec. 89-3-5 and 25-33-23 (1972).

1. *Acknowledgments.* Commissioned officers may take acknowledgments of (a) members of the United States Armed Forces or their spouses at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) persons outside said limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

(**NOTE**: No provision is made for the spouses of persons in (b) and (c).)

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

MISSOURI Mo. Ann. Stat., Sec. 442.160 and 492.070 (Vernon, 1949).

1. *Acknowledgments.* Commissioned officers on active duty may take acknowledgments for United States Armed Force members on active duty; and their spouses when joint or separate acknowledgment to same instrument is required. No local authority granted for any other acknowledgment.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments, except that there is no provision for taking oaths of spouses.

MONTANA Rev. Code Mont. Ann., Sec. 39-106 (1947).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) persons outside the limits of the United States of America by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEBRASKA Rev. Stat. Neb., Sec. 76-227 (1943), and 64-201 (1969).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of any persons, at any place. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Rev. Stat. Neb., Sec. 64-201.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEVADA Nev. Rev. Stat., 111.305 (1967).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for any

person serving in or with the United States Armed Forces, or any person whose duties require his presence with the United States Armed Forces, at any place. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEW HAMPSHIRE N. H. Rev. Stat. Ann., Ch. 456.12 (1968), and 456-A:1 (1969).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of those serving in or with the Armed Forces of the United States or their dependents wherever located. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in N. H. Rev. Stat. Ann. 456-A:1.

2. *Oaths and Sworn Instruments.* The only authority granted for any United States Armed Forces member to take oaths or sworn instruments is contained in N. H. Rev. Stat. Ann. 456-A:1.

NEW JERSEY N.J. Stats. Ann., Sec. 38:23A-1; 46:2B-1, 2, 3, and 46:2C-1, 2, and 5 (1968).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of (a) United States Armed Force members and their spouses at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; (c) a person outside said limits by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged, or in time of emergency (after 23 June 1950 and prior to termination of the national emergency proclaimed 16 December 1950). No provision is made for spouses of persons in (b) and (c) above.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEW MEXICO N.M. Stats. Ann., Sec. 43-1-7 (1953).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) persons who are outside those limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEW YORK N.Y. Real Prop. Law, Sec. 300 (McKinney 1968), Sec. 300; CPLR, Sec. 2309 and 4538 (McKinney 1968).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of persons serving in or with the Armed Forces of the United States or of any dependent of any such persons wherever located, or of any person attached to or accompanying the Armed Forces wherever located. No authentication now required.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

(NOTE: Where an oath of acknowledgment is by a member of the Armed Forces or by a dependent of such member the serial number of the member must appear.)

NORTH CAROLINA Gen. Stat. of N.C., Sec. 47-2 (1966).

1. *Acknowledgments.* Any warrant officer or other officer of higher rank may take acknowledgments of any persons, at any place.

2. *Oaths and Sworn Instruments.* No local authority granted for any United States Armed Force member to take oaths or sworn instruments.

NORTH DAKOTA N.D. Century Code, Title 47, 19-14.1 (1971).

Section 19-14-1 enacts the provisions of the Uniform Recognition of Acknowledgments Act. Previous authority under sections 19.17 and 19.17.1 has been repealed.

OHIO Ohio Rev. Code Ann., Sec. 147.38 (1969), and 147.51 (1974).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments, at any place, for United States Armed Force members and their dependents, and of persons serving with, employed by or accompanying the Armed Forces outside the United States, and their dependents. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Ohio Rev. Code Ann. Sec. 147.51.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

OKLAHOMA 72 Okl. St. Ann., Secs. 50.1 and 50.2 (1965), and 49 Okl. St. Ann., Secs. 101 and 102 (1969).

1. *Acknowledgments.* Sergeants, petty officers, warrant officers, and officers of higher grade may take acknowledgments of a person engaged in the military service of the United States and of his or her spouse if a joint or separate acknowledgment of the spouse is required. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in 49 Okl. St. Ann. Secs. 101 and 102.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments except that clause concerning spouses under Sections 50.1 and 50.2 is not applicable.

OREGON Ore. Rev. Stat., Secs., 194.410, 194.420, and 194.430 (1963).

1. *Acknowledgments.* Commissioned officers in active service (without restriction as to grade) may take acknowledgments of the persons who fall in one of the categories a-e below and are serving outside the boundaries of any of the 50 States and D.C.:

a. a member of the Army, Navy, Air Force, Marine Corps or Coast Guard on active duty;

b. a member of the merchant marine of the United States;

c. a civilian employee of the United States, in whatever category, whether or not subject to Civil Service or Federal administrative Acts, and whether or not paid from funds appropriated by the Congress of the United States;

d. a member of a religious group or welfare agency assisting members of the Armed Forces and officially attached to and serving with the Armed Forces; or

e. the spouse of any individual listed in a-d.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

PENNSYLVANIA 21 P.S., Sec. 291.10a (Supp. 1975); 57 P.S., Sec. 54 b-f (1964).

1. *Acknowledgments.* Commissioned officers in active service, in pay grade 01 or above, may take acknowledgments for persons serving in, or with, the Armed Forces of the United States, or their dependents, wherever located.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments except that there is no provision for dependents aside from the spouse of a member of the Armed Forces of the United States.

PUERTO RICO

No local statutory authority for any United States Armed Force member to take acknowledgments, oaths, or sworn instruments. (See section 2503 for Federal authority to perform these functions.)

RHODE ISLAND Gen. Laws of R.I., Sec. 34-12-5 (Spec. Supp., 1968).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of any person without the limits of the United States, and members of the Armed Forces and their dependents within the United States.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

SOUTH CAROLINA Code of Laws of S.C. (1976), Secs. 26-3 and 30-5.

1. *Acknowledgments.*

a. The Uniform Recognition of Acknowledgments Act has been enacted into law in South Carolina, and it appears in the Code of South Carolina, Sects. 26-3-10 through 26-3-90. Notarial acts, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents, may be performed outside the state for use in the state with the same effect as if performed by a notary public of South Carolina if performed by any commissioned officer in active service with the Armed Forces of the United States or any other person authorized by regulation of the Armed Forces to perform notarial acts if the notarial act is performed for one of the following or his or her dependents: a merchant seaman of the United States, a member of the Armed Forces of the United States or any other person serving with or accompanying the Armed Forces of the United States. The signature, rank or title and serial number, if any, of the person so authorized to perform notarial acts are sufficient proof of the authority of the holder of that rank or title to perform the act.

b. *Form of acknowledgment.*

State of ______________________________

County of ______________________________

The foregoing instrument was acknowledged before me this (date) by (Name and title of position)

(Signature of person taking acknowledgment)
(Title or Rank)
(Serial Number if any)

2. *Oaths and Sworn Instruments.* Same requisites as for acknowledgments.

3. *Recording.* Before any deed or other instrument in writing can be recorded in South Carolina:

a. The execution thereof shall be first proved by the affidavit of a subscribing witness to such instrument, taken before some officer within the state competent to administer an oath or before a person without the state so authorized, including, in the case of any officer or enlisted man of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty outside the state or any civilian employee of any such organization on active duty outside the Continental United States, any commissioned officer of said Army, Navy, Air Force, Marine Corps, or Coast Guard if such probating officer shall state his rank, branch, and organization;

b. The Uniform Recognition of Acknowledgments Act shall be complied with; or

c. The person executing it shall submit an affidavit subscribed to before a person authorized to perform notarial acts that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated therein.

SOUTH DAKOTA S.D.C.L., Secs. 18-4-6, 18-4-8, 18-3-2, and 18-3-4 (1967).

1. *Acknowledgments.* Commissioned officer in active service in pay grade 01 or above may take acknowledgments of any person serving in or with the Armed Forces of the United States wherever located.

2. *Oaths and Sworn Instruments.* Same requisites as for acknowledgments except that any civilian persons serving with, employed by, or accompanying the Armed Forces must be located outside of the United States.

TENNESSEE Tenn. Code Ann., Title 7, Secs.305-307 (1955).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of United States Armed Force members on active duty, and their spouses if they are accompanying their husbands in such service, at any place.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

TEXAS Vernon's Ann. Civil Stats., Arts. 26, 6602, and 6607 (1955).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of United States Armed Force members, auxiliaries thereto, or their spouses, at any place.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments but limited to United States Armed Forces members and auxiliaries thereto.

UTAH Utah Code Ann., Title 57-2-4 (1974).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for those serving in or with United States Armed Forces at any place. No provision made for spouses of dependents.

2. *Oaths and Sworn Instruments.* No local authority granted for any United States Armed Force member to take oaths or sworn instruments.

VERMONT V.S.A., Title 12, Sec. 5855 (1959).

1. *Acknowledgments.* Commissioned officers with the rank of captain in the Army or Air Force, or higher rank, or any officer with equivalent rank in other branches of the United States Armed Forces, may take acknowledgments of any person, at any place.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

VIRGIN ISLANDS 5 V.I.C. 694 and 28 V.I.C. 91 (1957).

1. *Acknowledgments.* Commissioned officers may take acknowledgments for those serving in or with United States Armed Forces at any place. No provision made for spouses or dependents. (See section 2503 for Federal authority to perform these functions.)

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

VIRGINIA Va. Code Sec. 55-114.1, 55-115, and 55-118.1 (1970).

1. *Acknowledgments.* Any commissioned officer of the United States Armed Forces and any commissioned officer of any State National Guard that is federally recognized may take the acknowledgment of United States Armed Force members on active duty and their consorts at any place. Additionally, persons who are authorized to take acknowledgments under Title 10 United States Code, Section 936(a), as that section existed on October 30, 1963, may take acknowledgments of (a) members of the Armed Forces at any place; (b) of persons employed by or accompanying such Armed Forces outside the United States and outside the Canal Zone, Guam, and the Virgin Islands; and (c) of any person subject to the Uniform Code of Military Justice outside the United States. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Va. Code Sec. 55-118.1.

2. *Oaths and Sworn Instruments.* The only authority granted for any United States Armed Forces member to take oaths or sworn instruments is contained in Va. Code 55-118.1.

WASHINGTON R.C.W.A., 73.20.010 (1962).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia, at any time; and (c) persons outside said limits by permission, assignment or direction of any Department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

WEST VIRGINIA W.Va. Code, Secs. 39-1-4a and 57-5-9 (1966); Sec. 39-1A-1 (1971).

1. *Acknowledgments.* Commissioned officers of any branch of the military service of the United States or auxiliary unit officially connected with such military service (without restriction as to grade) may take acknowledgments at any place of any person who is:

a. in the military service of the United States, including the Women's Army Auxiliary Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, "Spars," Women's Reserve or similar women's auxiliary unit officially connected with the military service of the United States, or

b. the spouse of anyone in the military service of the United States including the said components and auxiliary units.

Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgment Act have been enacted and are incorporated in W.Va. Code Sec. 29-1A-1.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

WISCONSIN W.W.S.A., Secs. 706.065 and 887.01(3) (Supp., 1976).

1. *Acknowledgments.* Commissioned officers (without restriction to grade) in active service may take acknowledgments for persons serving in or with the United States Armed Forces, or their dependents, wherever located. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in W.W.S.A. Sec. 706.065.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

WYOMING Wyo. Stats., Sec. 19-5 (Supp., 1969).

1. *Acknowledgments.* Commissioned officers may take acknowledgments of persons serving in or with the Armed Forces or their dependents wherever located.

2. *Oaths and Sworn Instruments.* No local authority granted for any United States Armed Force member to take oaths or sworn instruments.

APPENDIX SECTION – 1

NONPUNITIVE LETTER OF CAUTION (See section 0101c)

Date ________________________

FOR OFFICIAL USE ONLY

From: Commander Service Force, U. S. Atlantic Fleet
To: Ensign F__________L. R__________, SC, U. S. Navy, _________/3100
Via: (1)
(2)

Subj: Nonpunitive letter of caution

Ref: (a) Report of investigation into discrepancies in the ship's store returns for the first quarter of fiscal year 19____, USS _____________ (________)
(b) MCM par. 128c
(c) JAG Manual sec. 0101c

1. Reference (a) is the record of an investigation convened by _____________ to inquire into certain discrepancies in the ship's store returns for the first quarter in fiscal year 19____ in USS _______________.

2. [Here insert a precise statement of the relevant events and circumstances for which the letter of caution is issued.] From the foregoing, it is apparent that you performed your duties in a careless manner. Such carelessness contributed to the improper operation of the ship's store in USS ___________. Accordingly, you are hereby administratively cautioned pursuant to references (b) and (c).

3. This letter, being nonpunitive, is addressed to you as a corrective measure. It does not become a part of your official record. You are advised, however, that in the future you will be expected to exercise greater care in the performance of your duties in order to measure up to the high standard of performance of duty required of all officers in the Service Force. Commander Service Force, U. S. Atlantic Fleet, trusts that the instructional benefit which you will receive from this experience will cause you to become a more proficient naval officer.

[Signature]

FOR OFFICIAL USE ONLY

PUNITIVE LETTER OF REPRIMAND (See section 0102)

Date ______________________

FOR OFFICIAL USE ONLY

From: Commander Cruiser-Destroyer Force, U. S. Atlantic Fleet
To: Lieutenant J_______T. V_______, U. S. Navy, ___________/1100
Via: (1)
(2)

Subj: Letter of reprimand

Ref: (a) Report of investigation of collision between USS _______ (______), and SS _________ which occurred on _____ April 19____
(b) UCMJ art. 15
(c) MCM par. 131c(1)
(d) JAG Manual sec. 0102

1. Reference (a) is the record of an investigation convened by Commander Cruiser-Destroyer Force, U. S. Atlantic Fleet, to inquire into the collision between USS ______ (______) and SS _________ on ____ April 19____. The collision occurred in the Atlantic Ocean about 60 miles east of Norfolk, Virginia. You were a party to the investigation and were accorded your rights as such. [As applicable, except in the case of a member attached to or embarked in a vessel, add: You have been advised that you have the right to demand trial by court-martial in lieu of nonjudicial punishment and you have not demanded such trial.]

2. [Here insert a precise statement of all relevant events and circumstances of the offense or offenses in violation of an article or articles of the Uniform Code of Military Justice for which the letter of reprimand is issued.]

3. Your actions clearly show that you were derelict in the performance of your duties as Officer of the Deck, USS ___________, on the morning of _____ April 19____ in that you negligently failed to:

a. Maintain USS ____________, on a safe course as required by U. S. Navy Regulations.

b. Employ all means and devices available to you for detecting and avoiding danger from collision as required by USS ____________ Standing Night Orders and U. S. Navy Regulations.

FOR OFFICIAL USE ONLY

PUNITIVE LETTER OF REPRIMAND (continued)

FOR OFFICIAL USE ONLY

c. Inform your commanding officer when you made a course and speed change at about six minutes before the collision as required by U. S. Navy Regulations.

4. Pursuant to references (b), (c), and (d) you are hereby reprimanded for your negligence in the performance of duty as set forth above.

[Here insert final paragraphs prescribed by 0102e(4)]

[Signature]

FOR OFFICIAL USE ONLY

PUNITIVE LETTER OF ADMONITION (See section 0102)

Date ______________________

FOR OFFICIAL USE ONLY

From: Commander Naval Air Force, U. S. Atlantic Fleet
To: Ensign B________L. N________, U. S. Naval Reserve, ________/1105
Via: (1)
(2)
(3)

Subj: Letter of admonition

Ref: (a) Report of investigation to inquire into the loss of a classified publication which occurred on ____ June 19____
(b) Record of impartial hearing held in USS ____________(______) on ______ June 19____
(c) MCM par. 133b
(d) UCMJ art. 15
(e) MCM par. 131c(1)
(f) JAG Manual sec. 0102

1. Reference (a) is the record of an investigation convened by ______________ to inquire into the loss of a classified publication which occurred on _____ June 19____. Although you were not designated a party to the investigation, you were accorded your rights in the impartial hearing, recorded in reference (b), which was conducted in accordance with reference (c). [As applicable, except in the case of a member attached to or embarked in a vessel, add: You have been advised that you have the right to demand trial by court-martial in lieu of nonjudicial punishment and you have not demanded such trial.]

2. [Here insert a precise statement of all relevant events and circumstances of the offense or offenses in violation of an article or articles of the Uniform Code of Military Justice for which the letter of admonition is issued.]

3. Under these circumstances it is considered that you were derelict in the performance of your duties in that you failed to:

a. Prepare a destruction report for nonregistered, noncryptographic publications in advance of destruction.

b. Use a check-off list for the nonregistered publications at the point of destruction.

FOR OFFICIAL USE ONLY

PUNITIVE LETTER OF ADMONITION (continued)

FOR OFFICIAL USE ONLY

c. Segregate superseded material from effective publications during stowage.

4. Pursuant to references (d), (e), and (f), you are hereby admonished for your derelictions in the performance of duty as custodian of the RPS-distributed publications in USS ______________ (________) as set forth in the preceding paragraph.

[Here insert final paragraphs prescribed in 0102e(4)]

[Signature]

FOR OFFICIAL USE ONLY

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE RELATING TO THE INVESTIGATION AND PROSECUTION OF CRIMES OVER WHICH THE TWO DEPARTMENTS HAVE CONCURRENT JURISDICTION (1955)

Whereas, certain crimes committed by individuals subject to the Uniform Code of Military Justice may be prosecuted by military tribunals under that Code or by civilian authorities in the Federal Courts; and

Whereas, it is recognized that although the administration and discipline of the armed services require that certain types of crimes committed by their personnel be investigated by those services and prosecuted before military tribunals other types of crimes committed by military personnel should be investigated by civil authorities and prosecuted before civil tribunals; and

Whereas, it is recognized that it is not feasible to impose inflexible rules to determine the respective responsibility of the civilian and military authorities as to each crime over which they may have concurrent jurisdiction and that informal arrangements and agreements may be necessary with respect to specific crimes or investigations; and

Whereas, agreement between the Department of Justice and the Department of Defense as to the general areas in which they will investigate and prosecute crimes to which both civil and military jurisdiction attach will, nevertheless, tend to make the investigation and prosecution of crimes more expeditious and efficient and give appropriate effect to the policies of civil government and the requirements of the armed forces:

It is hereby agreed and understood between the Department of Justice and the Department of Defense as follows:

1. Crimes committed on military installations. Except as hereinafter indicated, all crimes committed on a military installation by individuals subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the military department concerned if such department makes a determination that there is a reasonable likelihood that only individuals subject to the Uniform Code of Military Justice are involved in such crime as principals or accessories, and, except in extraordinary cases, that there is no victim other than persons who are subject to the Uniform Code of Military Justice or who are *bona fide* dependents or members of a household of military or civilian personnel residing on the installation. Unless such a determination is made, the military department concerned shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation if such crime is within the investigative authority of the FBI. The FBI shall investigate any serious crime of which it has been so advised for the purpose of prosecution in the civil courts unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by the military department concerned. Even if the determination provided for in the first sentence of this paragraph is made by the military department concerned, it shall promptly advise the FBI of any crime committed on a military installation in which there is a victim who is not subject to the Uniform Code of Military Justice or a *bona fide* dependent or member of the household of military or civilian personnel residing on the installation and that such

department is investigating the crime because it has been determined to be extraordinary. The military department concerned shall promptly advise the Federal Bureau of Investigation whenever the crime, except in minor offenses, involves fraud against the government, misappropriation, robbery, or theft of government property or funds, or is of a similar nature. All such crimes shall be investigated by the military department concerned unless it receives prompt advice that the Department of Justice has determined that the crime should be investigated by the FBI and that the FBI will undertake the investigation for the purpose of prosecution in the civil courts.

2. Crimes committed outside of military installations. Except as hereinafter indicated, all crimes committed outside of military installations, which fall within the investigative jurisdiction of the FBI and in which there is involved as a suspect an individual subject to the Uniform Code of Military Justice, shall be investigated by the FBI for the purpose of prosecution in civil courts, unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by other authorities. All such crimes which come first to the attention of military authorities shall be referred promptly by them to the FBI, unless relieved of this requirement by the FBI as to particular types or classes of crimes. However, whenever military personnel are engaged in scheduled military activities outside of military installations such as organized maneuvers or organized movement, the provisions of paragraph 1 above shall apply, unless persons not subject to the Uniform Code of Military Justice are involved as principals, accessories or victims.

If, however, there is involved as a suspect or as an accused in any crime committed outside of a military installation and falling within the investigative authority of the FBI an individual who is subject to the Uniform Code of Military Justice and if the military authorities believe that the crime involves special factors relating to the administration and discipline of the armed forces which would justify investigation by them for the purpose of prosecution before a military tribunal, they shall promptly advise the FBI of the crime and indicate their views on the matter. Investigation of such a crime may be undertaken by the military authorities if the Department of Justice agrees.

3. Transfer of investigative authority. An investigative body which has initiated an investigation pursuant to paragraphs 1 and 2 hereof shall have exclusive investigative authority and may proceed therewith to prosecution. If, however, any investigative body comes to the view that effectuation of those paragraphs requires the transfer of investigative authority over a crime, investigation of which has already been initiated by that or by any investigative body, it shall promptly advise the other interested investigative body of its views. By agreement between the Departments of Justice and Defense, investigative authority may then be transferred.

4. Administrative action. Exercise of exclusive investigative authority by the FBI pursuant to this agreement shall not preclude the military authorities from making inquiries for the purpose of administrative action related to the crime being investigated. The FBI will make the results of its investigations available to the military authorities for use in connection with such action.

Whenever possible, decisions with respect to the application in particular cases of the provisions of this Memorandum of Understanding will be made at the local level, that is, between the Special Agent in Charge of the local office of the Federal Bureau of Investigation and the local military commander.

5. Surrender of suspects. To the extent of the legal authority conferred upon them, the Department of Justice and the military authorities will each deliver to the other promptly suspects and accused individuals if authority to investigate the crimes in which such accused individuals and suspects are involved is lodged in the other by paragraphs 1 and 2 hereof.

Nothing in this memorandum shall prevent a military department from prompt arrest and detention of any person subject to the Uniform Code of Military Justice whenever there is knowledge or reasonable basis to believe that such a person has committed an offense in violation of such Code and detaining such person until he is delivered to the Federal Bureau of Investigation if such action is required pursuant to this memorandum.

6. Exception. This agreement shall not affect investigative authority now fixed by the Delimitations Agreement between the FBI, Office of Naval Intelligence, Intelligence Division of the Army and the Office of Special Investigations, Inspector General, United States Air Force.

ORDER TO TESTIFY (See Section 0112e)

IN THE MATTER OF)
)
) ORDER TO TESTIFY
)
)

____

____

____

To: (Witness to whom order is directed)

1. As an officer empowered to convene general courts-martial and pursuant to the provisions of sections 6002 and 6004, title 18, United States Code, I hereby make the following findings:

a. That (Name of witness) possesses information relevant to the pending trial by general court-martial of ______________________, and that the presentation of his testimony at this trial is necessary to the public interest; and

b. That it is likely that (Name of witness) would refuse to testify on the basis of his privilege against self-incrimination if subpoenaed to appear as a witness.

2. On the basis of these facts, and pursuant to section 6004 of title 18, United States Code, I hereby order (Name of witness) to appear and testify before the general court-martial convened for the trial of ______________. In accordance with section 6002 of title 18, no testimony or other information given by (Name of witness) (or any information directly or indirectly derived from such testimony or other information) can be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

3. This order is issued with the approval of the Attorney General of the United States set forth in Enclosure 1 annexed hereto.

____
Signature

____
Grade, Title

GRANT OF IMMUNITY (see section 0112h)

IN THE MATTER OF)
)
) GRANT OF IMMUNITY
)
)

To: (Witness to whom immunity is to be granted)

1. It appears that you are a material witness for the Government in the matter of [if charges have been preferred, set forth a full identification of the accused and the substance of all specifications preferred.]

2. In consideration of your testimony as a witness for the Government in the foregoing matter, you are hereby granted immunity from prosecution for any offense or offenses arising out of the matters therein involved concerning which you may be required to testify under oath.

3. It is understood that this grant of immunity from prosecution is effective only upon the condition that you actually testify as a witness for the Government. It is further understood that this grant of immunity from prosecution extends only to the offense or offenses in which you were implicated in the matter herein set forth and concerning which you testify under oath.

Signature

Grade, title

GRANT OF IMMUNITY (see section 0112h)

IN THE MATTER OF	)	
	)	
	)	GRANT OF IMMUNITY
	)	
	)	

____

____

To: (Witness to whom immunity is to be granted)

1. It appears that you are a material witness for the Government in the matter of [If charges have been preferred, set forth a full identification of the accused and the substance of all specifications preferred.]

2. In consideration of your testimony as a witness for the Government in the foregoing matter, you are hereby granted immunity from the use of your testimony or other information given by you (or any information directly or indirectly derived from such testimony or other information) against you in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with an order to testify in this matter.

3. It is understood that this grant of immunity from the use of your testimony or other information given by you (or other information directly or indirectly derived from such testimony or other information) against you in any criminal case is effective only upon the condition that you testify under oath as a witness for the Government.

____
Signature

____
Grade, title

MEMORANDUM OF PRETRIAL AGREEMENT-GENERAL COURTS-MARTIAL (See section 0114b(1)(d))

MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES Place ______________

v. Date ______________

____

______________	______________	______________
Name	Rate/Grade	Serial/Service No.

I, ______________________, the accused in a general court-martial, do hereby certify:

That, for good consideration and after consultation with my counsel, I do agree to enter a voluntary plea of GUILTY to the charges and specifications listed below, provided the sentence as approved by the convening authority will not exceed the sentence hereinafter indicated by me;

That it is expressly understood that, for the purpose of this agreement, the sentence is considered to be in these parts, namely: the punitive discharge, period of confinement or restraint, amount of forfeiture or fine, and reduction in rate or grade;

That should the court award a sentence which is less, or a part thereof is less, than that set forth and approved in the agreement, then the convening authority, according to law, will only approve the lesser sentence;

That I am satisfied with my defense counsel in all respects and consider him qualified to represent me in this court-martial;

That this offer to plead guilty originated with me and my counsel; that no person or persons whomsoever have made any attempt to force or coerce me into making this offer or pleading guilty;

That my counsel has fully advised me of the meaning and effect of my guilty plea and that I fully understand and comprehend the meaning thereof and all of its attendant effects and consequences, including the possibility that I may be processed for an administrative discharge, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved pursuant to this agreement;

That I understand that I may ask permission to withdraw my plea of guilty at any time before sentence is announced, and that the military judge may, at his discretion, permit me to do so; and

That I understand this offer and agreement and have been advised that it cannot be used against me in the determination of my guilt on any matters arising from the charges and specifications made against me in this court-martial.

That it is expressly understood that the pretrial agreement will become null and void in the event: (1) I fail to plead guilty to each of the charges and specifications set forth below, (2) the court refuses to accept my plea of guilty to any of the charges and specifications set forth below, (3) the court accepts each of my pleas but, prior to the time sentence is announced, I ask permission to withdraw any of my pleas, and the court permits me to do so, and (4) the court initially accepts my plea of guilty to each of the charges and specifications set forth below but, prior to the time the sentence is adjudged, the court sets aside any of my guilty pleas and enters a plea of not guilty on my behalf.

MEMORANDUM OF PRETRIAL AGREEMENT - GENERAL COURTS-MARTIAL (continued)

	CHARGES PREFERRED:		**GUILTY PLEA BY ACCUSED TO**:	
	Article #	Description	Article #	Description
1.				
2.				
3.				

MAXIMUM SENTENCE TO BE APPROVED BY CONVENING AUTHORITY:

See maximum sentence appendix to memorandum of pretrial agreement.

Signed: ______________________________
Name of accused Date and Place

Witness: ______________________ [Defense counsel, date and place]

Witness: ______________________ [Name, date and place]

The foregoing agreement is [approved] [disapproved].

____
Signature, grade and title of
convening authority

MAXIMUM SENTENCE APPENDIX TO MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES	)	Place:
	)	Date:
v.	)	
	)	GENERAL COURT-MARTIAL
	)	
	)	

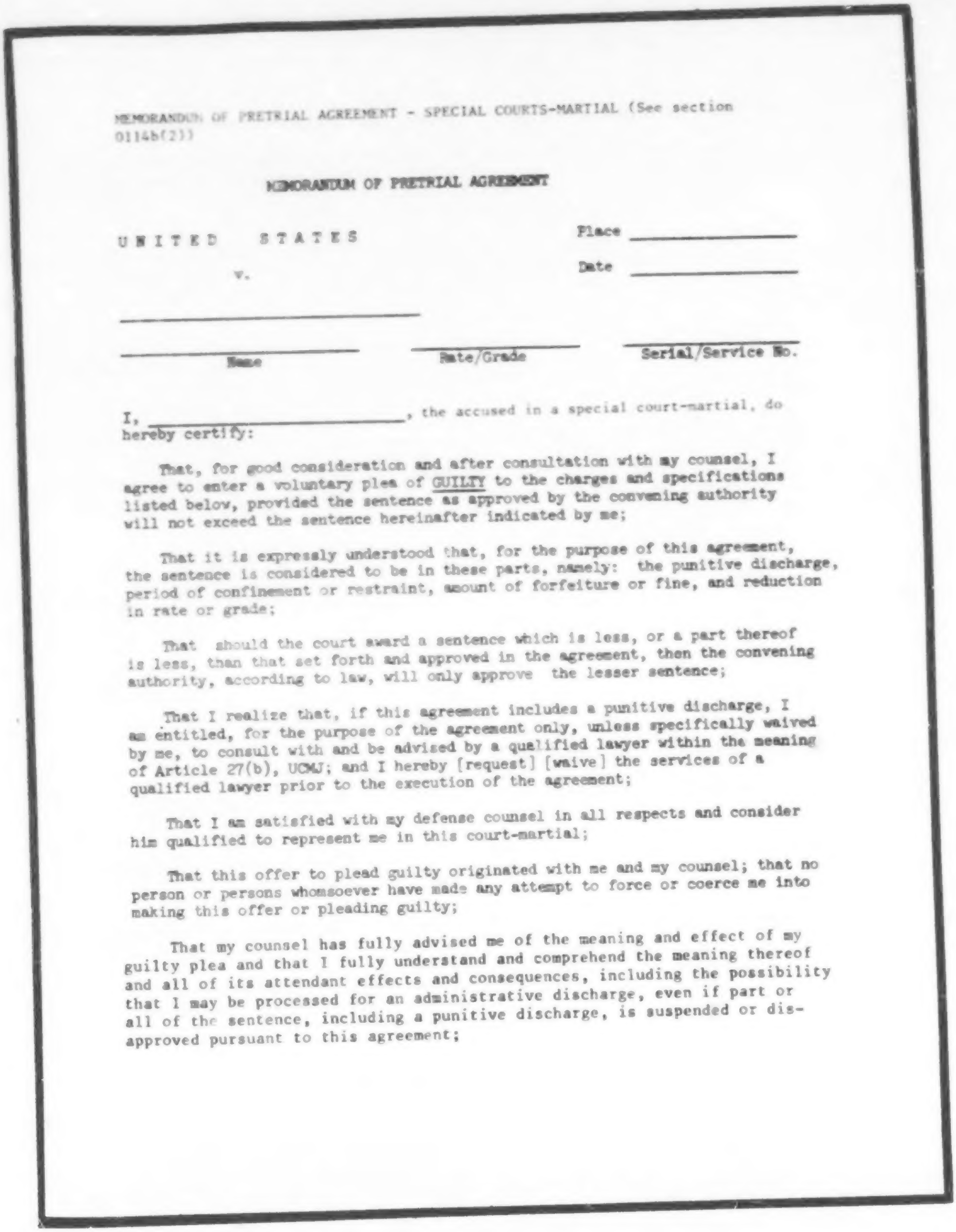
Maximum sentence to be approved by Convening Authority:

1. Punitive Discharge [character of and, if on probation, terms thereof]
2. Confinement or Restraint [amount and kind]
3. Forfeiture or fine [amount and duration]
4. Reduction to [rate or grade]

Signed: ______________________________
Name of accused Date and place

Witness: ______________________ [Defense counsel; name, date and place]

Witness: ______________________ [Name, date and place]



MEMORANDUM OF PRETRIAL AGREEMENT - SPECIAL COURTS-MARTIAL (See section 0114b(2))

MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES

v.

Place ______________

Date ______________

____

Name	Rate/Grade	Serial/Service No.

I, ____________________, the accused in a special court-martial, do hereby certify:

That, for good consideration and after consultation with my counsel, I agree to enter a voluntary plea of GUILTY to the charges and specifications listed below, provided the sentence as approved by the convening authority will not exceed the sentence hereinafter indicated by me;

That it is expressly understood that, for the purpose of this agreement, the sentence is considered to be in these parts, namely: the punitive discharge, period of confinement or restraint, amount of forfeiture or fine, and reduction in rate or grade;

That should the court award a sentence which is less, or a part thereof is less, than that set forth and approved in the agreement, then the convening authority, according to law, will only approve the lesser sentence;

That I realize that, if this agreement includes a punitive discharge, I am entitled, for the purpose of the agreement only, unless specifically waived by me, to consult with and be advised by a qualified lawyer within the meaning of Article 27(b), UCMJ; and I hereby [request] [waive] the services of a qualified lawyer prior to the execution of the agreement;

That I am satisfied with my defense counsel in all respects and consider him qualified to represent me in this court-martial;

That this offer to plead guilty originated with me and my counsel; that no person or persons whomsoever have made any attempt to force or coerce me into making this offer or pleading guilty;

That my counsel has fully advised me of the meaning and effect of my guilty plea and that I fully understand and comprehend the meaning thereof and all of its attendant effects and consequences, including the possibility that I may be processed for an administrative discharge, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved pursuant to this agreement;

MEMORANDUM OF PRETRIAL AGREEMENT - SPECIAL COURTS-MARTIAL (continued)

That I understand that I may ask permission to withdraw my plea of guilty at any time before sentence is announced, and that the military judge (or, if the court is a special court-marital without military judge, the president of the court) may, at his discretion, permit me to do so; and

That I understand this offer and agreement and have been advised that it cannot be used against me in the determination of my guilt on any matters arising from the charges and specifications made against me in this court-martial.

That it is expressly understood that the pretrial agreement will become null and void in the event: (1) I fail to plead guilty to each of the charges and specifications set forth below, (2) the court refuses to accept my plea of guilty to any of the charges and specifications set forth below, (3) the court accepts each of my pleas but, prior to the time sentence is announced, I ask permission to withdraw any of my pleas, and the court permits me to do so, or (4) the court initially accepts my plea of guilty to each of the charges and specifications set forth below but, prior to the time the sentence is adjudged, the court sets aside any of my guilty pleas and enters a plea of not guilty on my behalf.

	CHARGES PREFERRED		GUILTY PLEA BY ACCUSED TO:	
	Article #	Description	Article #	Description
1.				
2.				
3.				

MAXIMUM SENTENCE TO BE APPROVED BY CONVENING AUTHORITY:

See maximum sentence appendix to memorandum of pretrial agreement.

Signed: ______________________________
Name of accused Date and place

Witness: ______________________ [Defense counsel; name, date and place;
______________________ Statement of qualification where appropriate]

Witness: ______________________ [Name, date and place; statement of
______________________ qualification of additional defense
______________________ counsel, when used]

The foregoing agreement is [approved] [disapproved].

____
Signature, grade and title of
convening authority

MEMORANDUM OF PRETRIAL AGREEMENT - SPECIAL COURTS-MARTIAL (continued)

MAXIMUM SENTENCE APPENDIX TO MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES)
)
) Place:
v.) Date:
) SPECIAL COURT-MARTIAL
)
)

Maximum sentence to be approved by Convening Authority:

1. Punitive Discharge [character of and, if on probation, terms thereof]
2. Confinement or Restraint [amount and kind]
3. Forfeiture or fine [amount and duration]
4. Reduction to [rate or grade]

Signed: ______________________________
Name of accused   Date and place

Witness: ______________________ [Defense counsel; name, date and place]

Witness: ______________________ [Name, date and place]

COURT-MARTIAL DATA
NAVJAG 5813/1 (REV. 11/72)

RCS-JAG-5813-4
NCM NUMBER (1-7)

CONVENING AUTHORITY CO USS UNSINKABLE	SUPERVISORY AUTHORITY (8-10) Commander Afloat Forces, U.S. Atlantic Fleet

NAME *(Last, First, Middle)* (11-36) DOE, John William	SSN (37-45) 225-00-2976	PAY GRADE (46-47) E-3	SERVICE (48) ☒ NAVY (48.1) ☐ MARINE CORPS (48.2)	GCT SCORE (49-51) 65	AGE (52-53) 21

PRETRIAL RESTRAINT IMPOSED (54)
☐ NONE (54.1) ☒ CONFINEMENT (54.2) ☐ RESTRICTION (54.3) ☐ CONFINEMENT AND RESTRICTION (54.4)

MARITAL STATUS (55)
☐ SNGL (55.1) ☐ MARD (55.2) ☐ SEPTD (55.3) ☒ DIVRCD (55.4) ☐ ANULD (55.5) ☐ WIDOWD (55.6)

EDUCATION (56)
☐ LESS THAN HIGH SCHOOL GRADUATE (56.1) ☒ HIGH SCHOOL GRADUATE (56.2) ☐ HIGH SCHOOL GED (56.3) ☐ ATTENDED COLLEGE (56.4) ☐ COLLEGE GRAD (56.5)

CAREER STATUS (57)
☒ VOLUNTEER (57.1) ☐ INDUCTEE (57.2) ☐ ACTIVE DUTY RESERVE UNIT MEMBER (57.3)

SEX (58)
☒ MALE (58.1)
☐ FEMALE (58.2)

GEOGRAPHICAL LOCATION OF TRIAL (59-67)

AT SEA (59)	IN PORT: UNITED STATES (60-61)	IN PORT: COUNTRY (62-63)	ASHORE: UNITED STATES (64-65)	ASHORE: COUNTRY (66-67)
☐			VA	

TYPE OF COURT (68)
☐ ART 66 GCM (68.1) ☐ ART 69 GCM (68.2) ☐ ACQUITTAL GCM (68.3) ☒ BCD SPCM (68.4)

TRIAL

OFFENSES (11-66)

		CHARGES – ARTICLES	AFLOAT ORIENTED	NUMBER OF SPECIFICATIONS	C	(LEAVE BLANK) P	U	T	S	O
A	(11-24)	121.0	X	1						
B	(25-38)	134.16	X	5						
C	(39-52)	92.4	X	3						
D	(53-66)	85.0	X	1						

PLEAS – TO EACH CHARGE (67-70) (NOT SPECIFICATION)

			C
A	(67)	NG	
B	(68)	G	
C	(69)	NG	
D	(70)	G-LIO	

(ENTER PLEAS TO CHARGES ONLY)

☐ NEGOTIATED PLEA

COURT ACTION

FINDINGS OF COURT (11-14)

			C
A	(11)	NG	
B	(12)	G	
C	(13)	G	
D	(14)	G-LIO	

(ENTER FINDINGS TO CHARGES ONLY)

SENTENCE OF COURT (15-21)
☐ DD (15.1) ☒ BCD (15.2) ☒ FORFEITURE (16)
☒ REDUCTION (17) 6 MONTHS CONFINEMENT (18-20) ☐ DEATH (21)
DATE SENTENCE ADJUDGED (22-27): 2 Apr 1973
☒ PREVIOUS CONVICTIONS (28)

CONVENING AUTHORITY ACTION

CA ACTION ON FINDINGS (29-32)

			C
A	(29)		
B	(30)	App'd	
C	(31)	App'd	
D	(32)	App'd-LIO	

(ENTER ACTION ON CHARGES ONLY)

CA ACTION ON SENTENCE (33-38)
☐ DD REMITTED (33.1) ☐ DD MODIFIED TO BCD (33.2)
☐ BCD REMITTED (34.1) ☐ BCD SUSPENDED (34.2)
☐ OTHER MODIFYING ACTION (35) 6 MONTHS CONFINEMENT APPROVED (36-38)

SUPERVISORY AUTHORITY ACTION

SA ACTION ON FINDINGS (39-42)

			C
A	(39)		
B	(40)	App'd	
C	(41)	Disapp'd	
D	(42)	App'd-LIO	

(ENTER ACTION ON CHARGES ONLY)

SA ACTION ON SENTENCE (43-47)
☐ BCD SUSPENDED (43)
☒ OTHER MODIFYING ACTION (44)
4 MONTHS CONFINEMENT APPROVED (45-47)

COURT OF MILITARY REVIEW ACTION

USNCMR ACTION ON FINDINGS (48-51)

			C
A	(48)		
B	(49)		
C	(50)		
D	(51)		

USNCMR ACTION ON SENTENCE (52-57)
☐ DD REMITTED (52.1) ☐ DD MODIFIED TO BCD (52.2)
☐ UNSUSPENDED BCD REMITTED (53.1) ☐ SUSPENDED BCD REMITTED (53.2)
☐ OTHER MODIFYING ACTION (54) ______ MONTHS CONFINEMENT APPROVED (55-57)

SIGNATURE (OFFICER SIGNING BY DIRECTION OF OFFICER EXERCISING GCM JURISDICTION)
J. C. Linder, Cdr, JAGC, USN

S/N 0105-160-8134

A-1-g(1)

READEX FICHE

INSTRUCTIONS

This form will be prepared by all convening authorities and supervisory authorities, as appropriate, during the review of all trials of general courts-martial and all trials of special courts-martial involving bad conduct discharges. In all cases, the convening authority should complete the form through "Convening Authority Action." In special court-martial cases, the supervisory authority should complete the "Supervisory Authority Action." The signature of an officer authorized to sign "By Direction" of the officer exercising general court-martial jurisdiction should be placed in the appropriate space at the bottom of the form. The completed form should be attached under the cover sheet of the original record of trial and forwarded with the record to the Navy Appellate Review Activity, Office of the Judge Advocate General.

CODINGS FOR MACHINE CALCULATIONS. Disregard all numbers in parentheses, the columns headed "C," the space marked "Leave Blank," and the space for the "NCM Number."

PAY GRADE. Enter actual pay grade, i.e., E-1, E-2, O-1, O-2, etc.

PERSONAL DATA. Information as to actual GCT score, age, marital status, education, career status, and sex, may be obtained from the accused's service record.

GEOGRAPHICAL LOCATION OF TRIAL.

A. **AT SEA.** If the trial is held aboard a ship (including embarked units) which is not in port, an "X" should be placed in the "At Sea" box.

B. **IN PORT.** If the trial is held aboard a ship (including embarked units) which is in port in the United States, the two-letter abbreviation for the state should be placed in the space titled "United States." If the trial is held aboard a ship (including embarked units) which is in port in a country other than the United States, the two-letter code for the country should be placed in the space titled "Country." Two-letter state abbreviations and two-letter country codes are listed in the appendix to the JAG Manual following the sample form.

C. **ASHORE.** If the trial is held ashore in the United States, the two-letter abbreviation for the state should be placed in the space titled "United States." If the trial is held ashore in a country other than the United States, the two-letter code for the country should be placed in the space titled "Country." Two-letter state abbreviations and two-letter country codes are listed in the appendix to the JAG Manual following the sample form.

TRIAL.

A. **OFFENSES.** The punitive article identification code set forth following the sample form in the appendix to the JAG Manual is to be used in identifying the charges tried. If there are more than four charges, list the four most serious.

B. **AFLOAT ORIENTED.** Place an "X" in this column on the same line as the charge if any specification of the charge is "Afloat Oriented." Examples of "Afloat Oriented" offenses are: (1) Offenses which occur on board ship (including embarked units); (2) Unauthorized absence or desertion from a ship or embarked unit; (3) Missing the movement of a ship or embarked unit; (4) Failure to report for duty to a ship or embarked unit, or to a unit scheduled for embarking.

C. **SPECIFICATIONS.** Indicate the number of specifications for each charge listed.

D. **PLEAS.** Indicate the plea for each charge (not specification) listed. If guilty pleas were the result of a pretrial agreement, place an "X" in the "Negotiated Plea" box. Abbreviations may be used for guilty or not guilty, i.e., "G" and "NG." A guilty plea to a lesser included offense should be indicated by the abbreviation "G-LIO."

FINDINGS OF COURT. Indicate the findings of the court with respect to each charge (not specification) listed. Utilize the abbreviations "G," "NG," and "G-LIO."

ACTION ON FINDINGS BY REVIEWING AUTHORITIES. Indicate "App'd," "Disapp'd," or "App'd-LIO" with respect to each charge (not specification) listed.

SENTENCE OF THE COURT. Place "X's" in the appropriate boxes, and enter the number of months of confinement adjudged. If a life sentence was adjudged, enter "999" for the months of confinement.

PREVIOUS CONVICTIONS. If one or more previous court-martial convictions were considered by the court, place an "X" in the box.

ACTION ON SENTENCE BY CONVENING AUTHORITY. If the sentence as adjudged by the court is approved, make no entries except for months of confinement. Enter the number of months of confinement approved, even if it is the same as that adjudged by the court. If any modifying action is taken on the remainder of the sentence, indicate such action by placing "X's" in the appropriate boxes.

ACTION ON SENTENCE BY SUPERVISORY AUTHORITY. If the sentence as approved by the convening authority is approved, make no entries except for months of confinement. Enter the number of months of confinement approved, even if it is the same as that approved by the convening authority. If any modifying action is taken by the supervisory authority on the remainder of the sentence, indicate such action by placing "X's" in the appropriate boxes.

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE

Article	Offense	Code
	Follows Article number of substantive offense:	
78	Accessory (e.g., accessory to robbery - 122.6)	.6
80	Attempt (e.g., attempted rape - 120.7)	.7
81	Conspiracy(e.g., conspiracy to commit larceny - 121.8)	.8
82	Solicitation (e.g., solicit aid to the enemy - 104.9)	.9
M 83	Fraudulent enlistment	83.0
M 84	Unlawful enlistment	84.0
M 85	Desertion - with intent to remain permanently	85.0
	Desertion - to avoid hazardous duty	85.1
	Desertion - to shirk important service	85.2
	Desertion - entering other service	85.3
	Desertion - officer quitting post	85.4
M 86	Unauthorized absence - from unit, etc.	86.0
	Unauthorized absence - fail to go, etc.	86.1
	Unauthorized absence - go from place, etc.	86.2
M 87	Missing movement - through neglect	87.0
	Missing movement - through design	87.1
M 88	Contempt toward officials	88.0
M 89	Disrespect to superior officer	89.0
M 90	Striking, etc., superior officer	90.0
	Willful disobedience lawful order superior officer	90.1
M 91	Striking, etc., warrant officer or petty officer	91.0
	Disobedience lawful order warrant officer or petty officer	91.1
	Contempt toward warrant officer or petty officer	91.2
M 92	Violation lawful general order or regulation	92.0
	Failure to obey lawful general order or regulation	92.1
	Failure to obey any other lawful order	92.2
	Dereliction in performance of duty	92.3
	Drug/marijuana offenses	92.4

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article	Offense	Code
M 93	Cruelty or maltreatment	93.0
M 94	Mutiny	94.0
C 95	Resisting apprehension	95.0
	Breaking arrest	95.1
	Escape from custody	95.2
	Escape from confinement	95.3
M 96	Releasing prisoner without authority	96.0
	Suffering prisoner to escape through neglect	96.1
	Suffering prisoner to escape through design	96.2
M 97	Unlawful detention	97.0
M 98	Unnecessary delay in court-martial case	98.0
	Failure to enforce or comply with rules under UCMJ	98.1
M 99	Misbehavior before enemy	99.0
M 100	Subordinate compelling surrender	100.0
M 101	Improper use of countersign	101.0
M 102	Forcing safeguard	102.0
M 103	Offenses with captured or abandoned property	103.0
	Looting or pillaging	103.1
M 104	Aiding enemy	104.0
M 105	Misconduct as prisoner	105.0
M 106	Espionage	106.0
M 107	Signing false record, etc.	107.0
	False official statement	107.1
M 108	Selling or disposing of military property	108.0
	Losing military property through neglect	108.1
	Damaging, etc., military property	108.2
	Sabotage	108.3

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article	Offense	Code
C 109	Wasting, etc., other property	109.0
M 110	Hazarding, etc., vessel	110.0
	Sabotage	110.1
C 111	Operating vehicle while drunk	111.0
	Operating vehicle reckless manner	111.1
M 112	Drunk on duty	112.0
M 113	Sentinel or lookout drunk	113.0
	Sentinel or lookout asleep	113.1
	Sentinel or lookout leaving post	113.2
C 114	Dueling	114.0
M 115	Malingering	115.0
C 116	Riot	116.0
	Breach of peace	116.1
C 117	Using provoking, etc., words or gestures	117.0
C 118	Murder, premeditated	118.0
	Murder, with intent to kill, etc.	118.1
	Murder, engaged in dangerous act	118.2
	Murder, engaged in commission of felony	118.3
C 119	Manslaughter, voluntary	119.0
	Manslaughter, culpable negligence	119.1
	Manslaughter, engaged unlawful act	119.2
C 120	Rape	120.0
	Unlawful carnal knowledge	120.1
C 121	Larceny value more than $50	121.0
	Larceny value less than $50	121.1
	Wrongful appropriation	121.2
C 122	Robbery	122.0
C 123	Forgery	123.0
	Uttering forged writing	123.1

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article	Offense	Code
C 123a	Making, etc., check without sufficient funds	123.2
C 124	Maiming	124.0
C 125	Sodomy	125.0
C 126	Arson, simple	126.0
	Arson, aggravated	126.1
	Arson, sabotage	126.2
C 127	Extortion	127.0
C 128	Assault, simple	128.0
	Assault consummated by battery	128.1
	Assault with dangerous weapon	128.2
	Assault intentionally inflicting grievous harm	128.3
C 129	Burglary	129.0
C 130	Housebreaking	130.0
C 131	Perjury	131.0
C 132	False statement, etc., on claim, etc.	132.0
	False oath on claim, etc.	132.1
	Forging signature on claim, etc.	132.2
	Other fraud under art. 132	132.3
M 133	Conduct unbecoming officer and gentleman (no breakdown required under art. 133)	133.0
C 134.00	All offenses charged under art. 134 not falling in categories listed below	134.00
C .01	Adultery or fornication	134.01
C .02	Altered ID card, etc.	134.02
C .03	Assault, indecent	134.03
C .04	Assault, intent to commit felony	134.04
M .05	Assault, other under art. 134	134.05
C .06	Bad check offense	134.06
C .07	Bigamy or polygamy	134.07
M .08	Breach of restriction	134.08
C .09	Bribery or graft	134.09
C .10	Carrying concealed weapon	134.10
C .11	Counterfeiting	134.11

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article		Offense	Code
C	.12	Destroying, altering, etc., public record	134.12
M	.13	Discharging firearm	134.13
M	.14	Disloyal statement	134.14
C	.15	Disorder, disorderly	134.15
C	.16	Drugs or marijuana	134.16
C	.17	Drunk	134.17
C	.18	Drunk and disorderly	134.18
C	.19	Failure to pay debts	134.19
M	.20	False pass or permit	134.20
C	.21	False swearing	134.31
C	.22	Gambling	134.22
M	.23	Impersonating officer	134.23
M	.24	Improper uniform	134.24
C	.25	Indecent act or liberties with child	134.25
C	.26	Indecent or lewd act	134.26
C	.27	Indecent exposure	134.27
C	.28	Indecent language to female	134.28
C	.29	Leaving scene of accident	134.29
M	.30	Misbehavior as sentry	134.30
C	.31	Misprision of felony	134.31
C	.32	Negligent homicide	134.32
C	.33	Nuisance	134.33
C	.34	Obscene letter	134.34
C	.35	Offenses involving mail matter	134.35
C	.36	Pandering	134.36
M	.37	Parole	134.37
C	.38	Perjury, statutory or subornation of	134.38
C	.39	Receiving stolen property	134.39
C	.40	Refusal to testify	134.40
		Sabotage (see 134.50)	
C	.41	Sale to or purchase of liquor by minor	134.41
C	.42	Smuggling	134.42
M	.43	Straggling	134.43
C	.44	Threats	134.44
M	.45	Unauthorized insignia, etc.	134.45
M	.46	Unclean accoutrements, arms, etc.	134.46
C	.47	Unlawful entry	134.47
C	.48	Usury	134.48
C	.49	Wrongful use Government property	134.49
C	.50	Sabotage	134.50

"C" denotes civil-type offense
"M" denotes military-type offense

APPELLATE RIGHTS STATEMENT (See section 0121)

From: ____
(Accused)

To: Judge Advocate General

Subj: Appellate Rights Statement

1. I was convicted and sentenced by a ______________________ court-martial on ______________________ at ______________________. Pursuant to Article 70, Uniform Code of Military Justice, and paragraph 48*k*, *Manual for Courts-Martial, 1969, (Rev.)*, my defense counsel, ______________________, has advised me of my appellate rights and the review process of the record of my court-martial as follows:

a. The initial review will be made by the convening authority. In conducting this review, the convening authority may not approve any findings of guilty unless he is personally satisfied that each element of the offense or offenses of which I was found guilty is established beyond a reasonable doubt by legal and competent evidence of record. The convening authority is not empowered to reverse a finding of not guilty. Should the convening authority approve findings of guilty with regard to one or more offenses, then the convening authority is required to determine the appropriateness of the sentence adjudged. The convening authority may not approve any sentence unless the convening authority is personally satisfied that it is a legal, adequate, and appropriate punishment in view of all of the circumstances. Under no circumstances may the convening authority increase the severity of the sentence as adjudged. I have been further advised by my defense counsel that it is counsel's responsibility to represent me during the initial review of my court-martial conviction. In this regard, my defense counsel has advised me of my opportunity to request clemency, as well as deferment of any sentence to confinement. My defense counsel has also advised me of counsel's responsibility to become familiar with any issues that should be raised in the course of the appellate review of my conviction, to prepare a brief with regard to those issues if counsel deems such a procedure appropriate, and to examine the staff judge advocate's review for error. If convicted by a special court-martial not convened by an officer exercising general court-martial jurisdiction, I understand that the record of trial will also be reviewed by the supervisory authority. In this regard, I understand that the powers and responsibilities of the supervisory authority are identical to those of of the convening authority, but that the supervisory authority's review is limited to the findings and sentence as approved by the convening authority.

b. If, upon conclusion of the initial review of my court-martial conviction, my sentence includes a punitive discharge or confinement at hard labor for one year or more, I understand that the record of trial will be forwarded for review by the U.S. Navy-Marine Corps Court of Military Review in Washington, D.C. It is understood that the U.S. Navy-Marine Corps Court of Military Review essentially has the same responsibilities and powers as the convening or supervisory authorities, but it too is limited to reviewing the findings and sentence as approved on review below and may not reverse a finding of not guilty, approve findings of guilty previously disapproved, or approve a sentence more severe than that previously approved. In this regard, it is understood that no findings of guilty approved on review below may be affirmed by the U.S. Navy-Marine Corps Court of Military Review unless that court is satisfied that each element of the offense or offenses of which I was convicted is established beyond reasonable doubt by legal and competent evidence of record. It is further understood that if the U.S. Navy-Marine Corps Court of Military Review approves a finding of guilty with regard to one or more offenses, then that court is required to determine the appropriateness of the sentence as approved on review below, and that the court may not affirm a sentence as approved on review below unless the court finds that it is a legal, adequate, and appropriate punishment in view of all the circumstances.

c. If the U.S. Navy-Marine Corps Court of Military Review affirms the findings and sentence, in whole or in part, I understand that I have the right to seek further review of my court-martial conviction before the U.S. Court of Military Appeals. In this regard, I understand that the U.S. Court of Military Appeals is composed of three civilian judges and is located in Washington, D.C. Insofar as further review before the U.S. Court of Military Appeals is concerned, I understand that, whereas the review process described in the preceding paragraphs is automatic, I must request review before the U.S. Court of Military Appeals by filing a petition for grant of review within sixty (60) days from the earlier of the date of being notified of the decision of the U.S. Navy-Marine Corps Court of Military Review; or the date on which my copy of the decision of the U.S. Navy-Marine Corps Court of Military Review, after having been served on my appellate counsel of record, (if any), is deposited in the United States mails for delivery by first-class certified mail to the address provided by me; or, if I fail to provide such an address, to the latest address listed by me in my service record. Furthermore, I understand that a petition for grant of review before the U.S. Court of Military Appeals does not have to be granted by that court. I understand that such a petition is granted only on good cause shown and that whether good cause is shown is determined by the U.S. Court of Military Appeals. I understand that, if the U.S. Court of Military Appeals should grant my petition for review, its review of my case is limited solely to questions of law, and its review will also be limited to those questions of law concerning which review was granted. I understand that the U.S. Court of Military Appeals generally must accept the facts as found at trial or during the prior review of my case and that it has no power to amend the sentence as affirmed by the U.S. Navy-Marine Corps Court of Military Review, except in very limited circumstances.

d. It is my further understanding that should I fail to file a petition for grant of review before the U.S. Court of Military Appeals within sixty (60) days after notification or the date of certified mailing, as appropriate, of the U.S. Navy-Marine Corps Court of Military Review's decision in my case, or should the U.S. Court of Military Appeals deny a petition for grant of review, then the normal appellate review of my case is complete. It is understood that, at this point, all ordinary means of seeking appellate review of my court-martial conviction within the military system will have been exhausted and my conviction will be final. It is understood that, at such time as my conviction becomes final, any unexecuted portions of my sentence may be ordered executed at that time. If my sentence, as finally approved, includes a punitive discharge or dismissal, it is understood that I will be discharged or dismissed in accordance with the approved punishment.

2. In view of the foregoing, and should my court-martial be referred to the Navy-Marine Corps Court of Military Review under Article 66 or Article 69, Uniform Code of Military Justice, I have been informed that I am entitled to representation before the United States Navy-Marine Corps Court of Military Review and the United States Court of Military Appeals by appellate defense counsel who is a lawyer qualified in accordance with Article 27(b) of the Uniform Code of Military Justice, designated by the Judge Advocate General of the Navy, and provided at no expense to me. Although I am entitled to such representation, I understand that I must request such representation. In this regard, I understand that I may, if I wish, waive representation by appellate defense counsel by indicating such desires below. Moreover, I understand that if I waive my right to appellate representation, I am relinquishing many of the traditional benefits associated with the right to counsel, including examination of the record of trial by a qualified appellate advocate whose sole responsibility is the protection of my interests and the preparation of assignments of error and other pleadings which might benefit me. I understand that I have ten (10) days from notice of the action of the convening authority, or if convicted by a special court-martial not convened by an officer exercising general court-martial jurisdiction, from notice of the action of the supervisory authority, in which to forward a request for representation and that my failure to do so within this time may be regarded as a waiver of my right to designated appellate counsel. I also understand that, in addition to or in lieu of my designated appellate defense counsel, I may retain a civilian counsel to represent me before the U.S. Navy-Marine Corps Court of Military Review and the U.S. Court of Military Appeals, but that the services of a civilian counsel would be at my own expense and at no expense to the Government.

3. Having fully discussed the foregoing with my defense counsel:

____________ I do desire to be represented by appellate defense counsel, and I hereby request the Judge Advocate General of the Navy to designate an appellate defense counsel to represent me.

____________ I do *not* desire to be represented by appellate defense counsel. In making this choice I hereby acknowledge that I do so only after being informed by my trial defense counsel, whose signature appears below as witness to this statement, that I am relinquishing many of the traditional benefits associated with my right to counsel.

4. For administrative purposes, the following information is provided:

a. A civilian counsel was/was not retained to represent the accused at trial. If civilian counsel was retained to represent the accused at trial, civilian counsel indicates that civilian counsel's services have/have not been retained insofar as appellate review of the case is concerned. Civilian counsel's name, address, and telephone number are as follows:

____

____

____

____

Telephone: ______(_____)____________________

b. The services of an individual military counsel were/were not utilized. Individual military counsel's mailing address and telephone number are as follows:

____

____

____

____

Telephone: ______(_____)____________________

c. Detailed defense counsel's address and telephone number are as follows:

____

____

____

____

Telephone: ______(_____)____________________

d. Principal trial defense counsel in this case was ____________________________.

e. I understand that in order for my defense counsel or any successor counsel properly to represent me, I must keep counsel informed of my current mailing address. In this regard, the following permanent address and phone number are provided at which I may be contacted:

____

____

____

____

Telephone: _____ (____) ____________________

f. I further agree to forward any change of address to:

Director, Appellate Defense Division
Navy-Marine Corps Appellate Review Activity
Office of the Judge Advocate General
Washington Navy Yard
Washington, D.C. 20374

____________________	____________________
(Date)	(Signature of Accused)

Witnessed by:

____
(Signature)

____
(Name of Counsel)

NAVJAG 5800/9 (Rev. 11-77) S/N 0105-LF-100-8040

CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS AND COURT-MARTIAL REPORT

RCS JAG 5800-4A

REPORTING GCM AUTHORITY (1-3): Commander, Afloat Forces, Pacific Fleet

SERVICE (4):
☒ NAVY PERSONNEL REPORT (4.1)
☐ MARINE CORPS PERSONNEL REPORT (4.2)

QUARTERLY PERIOD ENDING: (5-8) 31 Mar 1979

NEGATIVE REPORTS (8):
☐ NAVY (8.1)
☒ MARINE CORPS (8.2)

SIGNATURE (Officer signing by direction of officer exercising GCM jurisdiction)

O.K. Barrister O.K. Barrister, LCDR, JAGC, USN

GENERAL INSTRUCTIONS

This report will be prepared and submitted quarterly to the Judge Advocate General by each officer exercising general court-martial jurisdiction (GCM AUTH). Separate reports will be submitted for Navy personnel and for Marine Corps personnel. Reports will be submitted by each GCM AUTH on 25 January, 25 April, 25 July and 25 October of each year.

Negative reports are required. The Negative Marine Corps Report block may be marked on the report submitted for Navy personnel if there are no Marine Corps statistics to be reported, or the Negative Navy Report block may be marked on the report submitted for Marine Corps personnel if there are no Navy statistics to be reported.

Statistics concerning court-martial cases will be obtained from records of trial reviewed by each GCM AUTH. Do not report court-martial cases in which action by the GCM AUTH has not been completed by the end of the reporting period.

Statistics concerning nonjudicial punishments and civil felony convictions will be reported during the period in which the NJP was imposed or the civil conviction occurred. Statistics will be obtained from NAVJAG 5800/9A forms submitted to each GCM AUTH by subordinate activities, and consolidated with any data maintained by the GCM AUTH.

When a GCM AUTH's command is disestablished, that GCM AUTH should report the cases reviewed prior to disestablishment. The GCM AUTH who accepts uncompleted cases from the disestablished command should include those cases (including all processing time) in his own report when review is complete.

When one GCM AUTH sends a case to another GCM AUTH for review because the original GCM AUTH is disqualified from reviewing the case, or for any reason other than disestablishment of the original GCM AUTH's command, the original GCM AUTH should include the case (including all processing time) in his own report when review is complete.

Do not include rehearings in Parts I through X of this form. Statistics as to the original trial should be reported in Parts I through X, but the rehearing should be reported only in Part XI. The original trial will be reported in Parts I through X as an acquittal.

PART I COURT-MARTIAL CASE TOTALS AND GEOGRAPHICAL LOCATIONS

PART IA CASE TOTALS

TYPE OF COURT	GUILTY PLEAS	NEGOTIATED PLEAS	TOTAL CONVICTIONS	TOTAL ACQUITTALS	TOTAL CASES
GENERAL COURTS-MARTIAL			(1-10) 3	(1-16) 1	(1-22) 4
BCD SPECIAL COURTS-MARTIAL			(1-28) 22		(1-34) 22
NON-BCD SPECIAL COURTS-MARTIAL	(1-40) 25	(1-46) 4	(1-52) 34	(1-58) 2	(1-64) 36
SUMMARY COURTS-MARTIAL	(1-70) 138		(2-10) 150	(2-16) 5	(2-22) 155
GRAND TOTAL			(2-28) 209	(2-34) 8	(2-40) 217

PART IA INSTRUCTIONS

A BCD SPCM is a case in which the sentence as approved by the GCM AUTH includes a bad conduct discharge, either suspended or unsuspended. . . A Non-BCD SPCM is a case in which the sentence as approved by the GCM AUTH does not include a bad conduct discharge, either suspended or unsuspended.

Report in the column headed "Guilty Pleas" those cases where the accused pleaded guilty to ALL charges and specifications, including negotiated plea cases.

The cases reported in the "Negotiated Pleas" column must be included in the cases reported in the "Guilty Pleas" column.

If a trial, after review by the GCM AUTH, resulted in conviction of any offense, it should be reported as a "conviction." If conviction of more than one offense is involved in a particular trial, report only one conviction for that individual's trial.

PART IB — **CONVICTIONS BY GEOGRAPHICAL LOCATION**

	GENERAL COURTS-MARTIAL						BCD SPECIAL COURTS-MARTIAL					
	CONUS CONVICTIONS			OVERSEAS CONVICTIONS			CONUS CONVICTIONS			OVERSEAS CONVICTIONS		
	STATE	CITY/ LOCATION	NUMBER CASES	COUNTRY	CITY/ LOCATION	NUMBER CASES	STATE	CITY/ LOCATION	NUMBER CASES	COUNTRY	CITY/ LOCATION	NUMBER CASES
SPECIFIC LOCATION	(3-10) CA	(3-13) SDG	(3-16) 2	(3-22) US	(3-25) PLH	(3-28) 1	(3-34) CA	(3-37) SDG	(3-40) 6	(3-46) JA	(3-49) JOK	(3-52) 3
SPECIFIC LOCATION	(3-58)	(3-61)	(3-64)	(4-10)	(4-13)	(4-16)	(4-22) CA	(4-25) SFR	(4-28) 3	(4-34) RP	(4-37) SUB	(4-40) 3
SPECIFIC LOCATION	(4-46)	(4-49)	(4-52)	(4-58)	(4-61)	(4-64)	(5-10) WA	(5-13) stl	(5-16) 2	(5-22)	(5-25)	(5-28)
ALL OTHER LOCATIONS			(5-34)			(5-40)			(5-46) 2			(5-52) 1
AT SEA			(5-58)			(5-64)			(5-70) 1			(6-10) 1
TOTAL CASES			(6-16) 2			(6-22) 1			(6-28) 14			(6-34) 8

	NON-BCD SPECIAL COURTS-MARTIAL						SUMMARY COURTS-MARTIAL					
	CONUS CONVICTIONS			OVERSEAS CONVICTIONS			CONUS CONVICTIONS			OVERSEAS CONVICTIONS		
	STATE	CITY/ LOCATION	NUMBER CASES	COUNTRY	CITY/ LOCATION	NUMBER CASES	STATE	CITY/ LOCATION	NUMBER CASES	COUNTRY	CITY/ LOCATION	NUMBER CASES
SPECIFIC LOCATION	(6-40) CA	(6-43) SDG	(6-46) 9	(6-52) JA	(6-55) JOK	(6-58) 2	(6-64) CA	(6-67) SDG	(6-70) 35	(7-10) RP	(7-13) SUB	(7-16) 10
SPECIFIC LOCATION	(7-22) CA	(7-25) SFR	(7-28) 2	(7-34) RP	(7-37) SUB	(7-40) 7	(7-46) CA	(7-49) SFR	(7-52) 20	(7-58) RP	(7-61) CBI	(7-64) 9
SPECIFIC LOCATION	(8-10) WA	(8-13) STL	(8-16) 1	(8-22)	(8-25)	(8-28)	(8-34) WA	(8-37) STL	(8-40) 4	(8-46) US	(8-49) PHL	(8-52) 2
ALL OTHER LOCATIONS			(8-58) 1			(8-64) 1			(8-70) 6			(9-10) 9
AT SEA			(9-16) 5			(9-22) 6			(9-28) 35			(9-34) 20
TOTAL CASES			(9-40) 18			(9-46) 16			(9-52) 100			(9-58) 50

PART IB INSTRUCTIONS

Report cases tried by the geographical locations of the trials. Specific cities/locations which may be used for each state and country, together with codes or abbreviations to be used, are listed in the appendix to the JAG Manual following the sample form. Trials held at locations other than those specified will be reported under "Other." If trials are held at more than three specified locations, report the three specified locations with the largest groups of cases and report the remainder of the cases in "Other."

Instructions for ships and embarked units:

(1) If trial held in port in CONUS or in any other country, follow above general instructions.

(2) If trial not held in port, but held at sea within the 3-mile limit of CONUS, report on the "At Sea" line in the "CONUS" section.

(3) If trial held at sea outside the 3-mile limit of CONUS, or if exact location of the ship or unit at the time of trial is not known by the GCM AUTH preparing the statistics, report on the "At Sea" line in the "Overseas" section.

The total CONUS convictions, plus the total Overseas convictions for each type of trial must match the total convictions for each type of trial in Part IA.

PART II — **NONJUDICIAL PUNISHMENTS AND CIVIL CONVICTIONS**

		CONUS	OVERSEAS	TOTAL
NONJUDICIAL PUNISHMENT IMPOSED (ART. 15)	(10-10)	(10-16) 2097	(10-22) 916	(10-28) 3013
U.S. FEDERAL AND STATE COURT FELONY CONVICTIONS		(10-34) 2	(10-40) 8	(10-46) 10

PART II INSTRUCTIONS

When an offense is a felony under the law of the jurisdiction in which the accused was convicted, it should be reported as a civil felony conviction.

Geographical Definitions:

CONUS - The 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.

OVERSEAS - All areas other than the 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.

NJPs aboard ship should be reported by the actual geographical location of the ship. NJPs aboard ships not actually within the 3-mile limit of CONUS will be reported in the Overseas column.

If conviction of more than one offense is involved in a particular trial or NJP, report only one conviction for that individual's trial or NJP.

PART III — DRUG AND MARIJUANA OFFENSE CONVICTIONS (ARTS. 92.4 AND 134.16, UCMJ)

TYPE	TOTAL NUMBER ACCUSED	TOTAL NUMBER ARTICLES	NUMBER SPECIFICATIONS BY TYPE OF OFFENSE: POSSESSION	USE	TRANSFER	SALE	OTHER
GENERAL COURTS-MARTIAL	1	2	1			1	
BCD SPECIAL COURTS-MARTIAL	4	5	2		1	2	
NON-BCD SPECIAL COURTS-MARTIAL	2	2	1	1			
SUMMARY COURTS-MARTIAL	3	4	3	1			
NONJUDICIAL PUNISHMENT (ART. 15)	18	18	17				1

PART III INSTRUCTIONS

Report only on drug/marijuana offenses. Do not report on other types of offenses which may have been tried at the same time.

The convictions reported under "Total Number Articles" for non-BCD SPCMs and SCMs must match the total Art. 92.4 & 134.16 convictions reported for each type of trial under Part IV.

PART IV — OFFENSES TRIED AND CONVICTED

		MILITARY-TYPE OFFENSES — ARTICLES					CIVIL-TYPE OFFENSES — ARTICLES					
		85-86	87	89-90-91-92	OTHER	TOTAL	121	128	92.4 & 134.16	OTHER	TOTAL	GRAND TOTAL
NON-BCD SPCM	TRIED	21	4	3	9	37	2	2	3	5	12	49
	CONVICTED	20	4	2	8	34	1	2	2	4	9	43
	CONV. LIO	1				3	1			1	2	5
SCM	TRIED	112		25	30	167	2	9	4	2	17	184
	CONVICTED	112		20	26	158	2	7	4	2	15	173
	CONV. LIO			1	3	4						4

PART IV INSTRUCTIONS

Report the number of charges (articles), not specifications. Convictions should be as approved by the GCM AUTH.

In "Other" under "Military-Type Offenses," indicate the total of military-type offenses which involve articles other than those reported separately in the preceding columns. In "Other" under "Civil-Type Offenses," indicate the total of civil-type offenses which involve articles other than those reported separately in the preceding columns.

The figures reported in this part concern articles and not cases, and therefore will not match the case totals reported in Part IA.

PART V — AFLOAT-ORIENTED OFFENSES

NON-BCD SPECIAL COURTS-MARTIAL: AFLOAT-ORIENTED ARTICLES TRIED	NON-AFLOAT-ORIENTED ARTICLES TRIED	TOTAL ARTICLES TRIED	SUMMARY COURTS-MARTIAL: AFLOAT-ORIENTED ARTICLES TRIED	NON-AFLOAT-ORIENTED ARTICLES TRIED	TOTAL ARTICLES TRIED
35	14	49	130	54	184

PART V INSTRUCTIONS

If any specification of a charge is "afloat-oriented," the charge (article) should be reported as an "Afloat-Oriented Article Tried." Examples of "afloat-oriented" offenses are: (1) offenses which occur on board ship (including embarked units); (2) unauthorized absence or desertion from a ship or embarked unit; (3) missing the movement of a ship or embarked unit; (4) failure to report for duty to a ship or embarked unit, or to a unit scheduled for embarking.

The total articles tried for each type of trial must match the total articles for each type of trial on the "Tried" line in the "Grand Total" column of Part IV.

PART VI — ACTION ON SENTENCES BY CA AND SA

TYPE OF COURT	TOTAL CASES REVIEWED	DISCHARGE ADJUDGED: DD	DISCHARGE ADJUDGED: BCD	CONVENING AUTHORITY: DD REMITTED	BCD REMITTED	DD MODIFIED TO BCD	BCD SUSPENDED	OTHER MODIFYING ACTION	SUPERVISORY AUTHORITY: BCD REMITTED	BCD SUSPENDED	OTHER MODIFYING ACTION
GCM	4	1	2								
SPCM	58		25		2		4	9	1	2	6
SCM	155							35			20

PART VI INSTRUCTIONS

The "Total Cases Reviewed" must match the total cases reported in Part IA.

PART VII DISCHARGES FOR DRUG AND MARIJUANA OFFENSES (ARTS. 92.4 AND 134.16, UCMJ)

TYPE OF COURT	PUNITIVE DISCHARGES FOR CONVICTION OF DRUG/MARIJUANA OFFENSES ONLY (ARTS. 92.4 AND 134.16, UCMJ)				UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF TRIAL BY COURT-MARTIAL
	ADJUDGED		EXECUTED		
	DD	BCD	DD	BCD	
GENERAL COURTS-MARTIAL		1		2	3
BCD SPECIAL COURTS-MARTIAL		3		5	

PART VII INSTRUCTIONS

Report punitive discharges executed during the reporting period, regardless of where or when the trial was held.

Do not include discharges where conviction of any offenses other than drug/marijuana offenses were involved.

Statistics concerning discharges executed will be obtained from NAVJAG 5800/9A forms submitted to each GCM AUTH by subordinate activities, and consolidated with any data maintained by the GCM AUTH.

The totals reported in this part must be included in the totals reported in Part VIII.

PART VIII DISCHARGES

TYPE OF COURT	ADJUDGED								EXECUTED	
	CONUS		OVERSEAS				TOTAL			
	DD	BCD	DD	BCD	DD	BCD	DD	BCD	DD	BCD
GCM	1	1		1			1	2		5
SPCM		17		8				25		14

UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF TRIAL BY COURT-MARTIAL	NO. EXECUTED
	14

PART VIII INSTRUCTIONS

Report punitive discharges executed during the reporting period, regardless of where or when the trial was held.

Statistics concerning discharges executed will be obtained from NAVJAG 5800/9A forms submitted to each GCM AUTH by subordinate activities, and consolidated with any data maintained by the GCM AUTH.

The totals reported in this part must include the totals reported in Part VII.

The total discharges adjudged must match the total discharges adjudged which are reported in Part VI.

PART IX ORGANIZATION OF COURT

TYPE OF COURT	WITHOUT MEMBERS	WITH MEMBERS			TOTAL CASES REVIEWED
	MILITARY JUDGE ALONE	MILITARY JUDGE WITH MEMBERS	PRESIDENT WITHOUT MILITARY JUDGE	TOTAL WITH MEMBERS	
GENERAL COURTS-MARTIAL	2	2		2	4
BCD SPECIAL COURTS-MARTIAL	18	4		4	22
NON-BCD SPECIAL COURTS-MARTIAL	25	9	2	11	36

PART IX INSTRUCTIONS

The total cases reviewed must match the totals reported in Part IA.

PART X PROCESSING TIME

TOTAL CASES REVIEWED: GCM 4 BCD SPCM 22 NON-BCD SPCM 36 SCM 155

GROSS PROCESSING TIME CATEGORIES	TOTAL ACTUAL ELAPSED DAYS			
	GCM	SPCM		SCM
		BCD	NON-BCD	
ACCUSED RESTRICTED, ARRESTED, OR CONFINED BY MILITARY AUTHORITY TO CHARGES PREFERRED	40	220	360	1240
CHARGES PREFERRED TO CHARGES RECEIVED BY CONVENING AUTHORITY	4	22	36	155
RECEIPT OF CHARGES BY CONVENING AUTHORITY TO CHARGES REFERRED FOR TRIAL	140	330	540	465
CHARGES REFERRED FOR TRIAL TO SENTENCE OR ACQUITTAL	240	990	1224	465
SENTENCE OR ACQUITTAL TO RECEIPT BY CONVENING AUTHORITY FOR ACTION	60	264	180	310
RECEIPT BY CONVENING AUTHORITY TO CONVENING AUTHORITY ACTION	20	110	180	310
CONVENING AUTHORITY ACTION TO RECEIPT BY GCM AUTH FOR ACTION		154	360	1085
RECEIPT BY GCM AUTH TO GCM AUTH ACTION		154	180	465
TOTAL GROSS PROCESSING TIME	504	2244	3060	4495
DEDUCTIONS				
DAYS OF DELAY REQUESTED BY DEFENSE	108	836	936	620
DAYS ACCUSED SICK OR IN HOSPITAL OR AWOL	48	485	1260	2325
TOTAL DEDUCTIBLE DAYS	156	1320	2196	2945
TOTAL NET PROCESSING TIME	348	924	864	1550

PART X INSTRUCTIONS

The processing times should be reported in actual days, not averages.

Processing times should be obtained from the CHRONOLOGY SHEET on the reverse of the front cover of each record of trial (DD Form 490 or DD Form 491).

All elapsed time, including elapsed time reported in the "Deductions" portion of Section X must be reported in the "Gross Processing Time" portion. To obtain the total net processing time, subtract the total deductible days from the total gross processing time.

The total cases reviewed must match the totals reported in Part IA.

PART XI REHEARINGS HELD

	GENERAL COURTS-MARTIAL	BCD SPECIAL COURTS-MARTIAL	NON-BCD SPECIAL COURTS-MARTIAL	SUMMARY COURTS-MARTIAL
NUMBER CASES		1	1	

PART XI INSTRUCTIONS

Report only those rehearings which have been acted on by the GCM AUTH.

A BCD SPCM is a case in which the sentence of the rehearing as approved by the GCM AUTH includes a bad conduct discharge, either suspended or unsuspended.

A Non-BCD SPCM is a case in which the sentence of the rehearing as approved by the GCM AUTH does not include a bad conduct discharge, either suspended or unsuspended.

NAVJAG 5800/9A (Rev. 11-77)

SUPPLEMENTAL REPORT TO THE CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS AND COURT-MARTIAL REPORT

RCS JAG 5800-4B

FROM: Commanding Officer, Naval Station, Hutchinson, Kansas
(COMMANDING OFFICER, OFFICER IN CHARGE, OR SPECIALLY DESIGNATED OFFICER AUTHORIZED TO IMPOSE NJP)

TO: Commandant, Seventh Naval District
(HIGH AUTHORITY ACTING AS SUPERVISORY AUTHORITY OVER THE COMMAND ON THE LAST DAY OF THE REPORTING PERIOD)

SUBJ: REPORT FOR QUARTER ☒ 1 JAN - 31 MAR 1979 (YEAR) ☐ 1 APR - 30 JUN ____ (YEAR) ☐ 1 JUL - 30 SEP ____ (YEAR) ☐ 1 OCT - 31 DEC ____ (YEAR)

NAVY PERSONNEL REPORT

☐ NEGATIVE REPORT

NONJUDICIAL PUNISHMENTS[1] AND CIVIL CONVICTIONS[2]

		CONUS	OVERSEAS	TOTAL
NONJUDICIAL PUNISHMENT IMPOSED (ART. 15)[3]		195		195
U. S. FEDERAL AND STATE COURT FELONY CONVICTIONS[3]		2		2

DRUG AND MARIJUANA OFFENSES[4] - ARTS. 92.4 AND 134.16, UCMJ

	TOTAL NUMBER ACCUSED	TOTAL NUMBER ARTICLES	NUMBER SPECIFICATIONS BY TYPE OF OFFENSE				
			POSSESSION	USE	TRANSFER	SALE	OTHER
NONJUDICIAL PUNISHMENT (ART. 15) IMPOSED	9	16	10	6			

DISCHARGES EXECUTED[5]

TYPE OF COURT	PUNITIVE DISCHARGES EXECUTED FOR CONVICTION OF DRUG MARIJUANA OFFENSES ONLY (ARTS. 92.4 AND 134.16, UCMJ)[6]		UNDESIRABLE DISCHARGES EXECUTED FOR DRUG MARIJUANA OFFENSES AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL	TYPE OF COURT	TOTALS - INCLUDE PRECEDING DRUG MARIJUANA TOTALS: PUNITIVE DISCHARGES EXECUTED		TOTALS - INCLUDE PRECEDING DRUG MARIJUANA TOTALS: UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL
	DD	BCD			DD	BCD	
GCM	1	3		GCM	2	8	
SPCM	■	2		SPCM	■	10	9

MARINE CORPS PERSONNEL REPORT

☒ NEGATIVE REPORT

NONJUDICIAL PUNISHMENTS[1] AND CIVIL CONVICTIONS[2]

		CONUS	OVERSEAS	TOTAL
NONJUDICIAL PUNISHMENT IMPOSED (ART. 15)[3]				
U. S. FEDERAL AND STATE COURT FELONY CONVICTIONS[3]				

DRUG AND MARIJUANA OFFENSES[4] - ARTS. 92.4 AND 134.16, UCMJ

	TOTAL NUMBER ACCUSED	TOTAL NUMBER ARTICLES	NUMBER SPECIFICATIONS BY TYPE OF OFFENSE				
			POSSESSION	USE	TRANSFER	SALE	OTHER
NONJUDICIAL PUNISHMENT (ART. 15) IMPOSED							

DISCHARGES EXECUTED[5]

TYPE OF COURT	PUNITIVE DISCHARGES EXECUTED FOR CONVICTION OF DRUG MARIJUANA OFFENSES ONLY (ARTS. 92.4 AND 134.16, UCMJ)[6]		UNDESIRABLE DISCHARGES EXECUTED FOR DRUG MARIJUANA OFFENSES AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL	TYPE OF COURT	TOTALS - INCLUDE PRECEDING DRUG MARIJUANA TOTALS: PUNITIVE DISCHARGES EXECUTED		TOTALS - INCLUDE PRECEDING DRUG MARIJUANA TOTALS: UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL
	DD	BCD			DD	BCD	
GCM				GCM			
SPCM	■			SPCM	■		

SIGNATURE OF COMMANDING OFFICER OR OFFICER AUTHORIZED TO SIGN BY DIRECTION

M. F. Smith M.F. Smith, LT, USN

S/N 0105-LF-109-9090

GENERAL INSTRUCTIONS

This report will be submitted semiannually to the general court-martial authority (GCM AUTH) acting as supervisory authority over the command on the last day of the reporting period.

The report will be submitted within five working days following the end of each three-month period.

DO NOT send the original or a copy of the report to the Judge Advocate General.

SPECIFIC INSTRUCTIONS

1. If conviction of more than one offense is involved in a particular NJP, report only one conviction for that individual's NJP.

2. When an offense is a felony under the law of the jurisdiction in which the accused was convicted, it should be reported as a civil court felony conviction. If conviction of more than one offense is involved in a particular trial, report only one conviction for that individual's trial.

3. Geographical Definitions:

   CONUS - The 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.

   OVERSEAS - All areas other than the 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.

   NJPs aboard ship should be reported by the actual geographical location of the ship. NJPs aboard ships not actually within the 3-mile limits of CONUS will be reported in the OVERSEAS column.

4. Report only on drug/marijuana offenses. Do not report on other types of offenses which may have been included in the NJP.

5. Report punitive discharges executed during reporting period, regardless of where or when trial was held.

6. Do not include discharges where conviction of any offenses other than drug/marijuana offenses were involved.

STATES - CITIES/LOCATIONS

STATES	ABBREVIATIONS	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Alabama	AL	None - report under "Other"	
Alaska	(See Country-Cities/Locations)		
Arizona	AZ	Yuma	YUM
Arkansas	AR	None - report under "Other"	
California	CA	Barstow	BTO
		Camp Pendleton	PEN
		China Lake	CHL
		Lemoore	LMR
		Los Angeles area	LOS
		Pt. Mugu-Port Hueneme	MGU
		San Diego area	SDG
		San Francisco area	SFR
		Twenty-Nine Palms	TNP
Colorado	CO	None - report under "Other"	
Connecticut	CT	New London	NLN
Delaware	DE	None - report under "Other"	
District of Columbia	DC	Washington	WSH
Florida	FL	Jacksonville-Mayport area	JAX
		Key West	KWS
		Orlando	ORL
		Pensacola	PCL
Georgia	GA	Albany	ALB
Hawaii	(See Country-Cities/Locations)		
Idaho	ID	None - report under "Other"	
Illinois	IL	Glenview	GLN
		Great Lakes	GLK
Indiana	IN	None - report under "Other"	

CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS AND COURT-MARTIAL REPORT (Continued)

STATES - CITIES/LOCATIONS (continued)

STATES	ABBREVIATIONS	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Iowa	IA	None - report under "Other"	
Kansas	KS	None - report under "Other"	
Kentucky	KY	None - report under "Other"	
Louisiana	LA	New Orleans	NOL
Maine	ME	Brunswick	BRW
Maryland	MD	Bainbridge Bethesda Patuxent	BNB BTH PAX
Massachusetts	MA	Boston area	BSN
Michigan	MI	None - report under "Other"	
Minnesota	MN	None - report under "Other"	
Mississippi	MS	Gulfport Meridian	GPT MDN
Missouri	MO	None - report under "Other"	
Montana	MT	None - report under "Other"	
Nebraska	NE	None - report under "Other"	
Nevada	NV	None - report under "Other"	
New Hampshire	NH	Portsmouth	PTS
New Jersey	NJ	None - report under "Other"	
New Mexico	NM	Albuquerque	ABQ
New York	NY	Brooklyn-New York City area	BKN
North Carolina	NC	Camp Lejeune Cherry Point	LEJ CHP
North Dakota	ND	None - report under "Other"	

STATES - CITIES/LOCATIONS (continued)

STATES	ABBREVIATIONS	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Ohio	OH	None - report under "Other"	
Oklahoma	OK	None - report under "Other"	
Oregon	OR	None - report under "Other"	
Pennsylvania	PA	Philadelphia	PHL
Rhode Island	RI	Newport Quonset Point	NPT QPT
South Carolina	SC	Charleston Parris Island	CSN PAR
South Dakota	SD	None - report under "Other"	
Tennessee	TN	Memphis area	MFS
Texas	TX	Corpus Christi	COR
Utah	UT	None - report under "Other"	
Vermont	VT	None - report under "Other"	
Virginia	VA	Little Creek Norfolk area Quantico	LCR NOR QTO
Washington	WA	Seattle Whidbey Island	STL WHD
West Virginia	WV	None - report under "Other"	
Wisconsin	WI	None - report under "Other"	
Wyoming	WY	None - report under "Other"	

COUNTRIES - CITIES/LOCATIONS

COUNTRIES	CODES	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
American Samoa	AQ	None - report under "Other"	
Antarctica	AY	None - report under "Other"	
Australia	AS	Canberra Exmouth	CNB EXM
Bahamas	BF	None - report under "Other"	
Bahrain	BA	None - report under "Other"	
Barbados	BB	None - report under "Other"	
Bermuda	BD	None - report under "Other"	
British Honduras	BH	None - report under "Other"	
British Indian Ocean Ter.	IO	None - report under "Other"	
British Solomon Islands	BP	None - report under "Other"	
British Virgin Islands	VI	None - report under "Other"	
Cambodia	CB	None - report under "Other"	
Canada	CA	Argentia, Newfoundland	ARG
Canal Zone	PQ	Fort Amador	AMD
China, Republic of	TW	None - report under "Other"	
Cook Islands	CW	None - report under "Other"	
Costa Rica	CS	None - report under "Other"	
Cuba	CU	Guantanamo Bay	GTO
Cyprus	CY	None - report under "Other"	

COUNTRIES - CITIES/LOCATIONS (continued)

COUNTRIES	CODES	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Dominican Republic	DR	None - report under "Other"	
France	FR	None - report under "Other"	
Gibraltar	GI	None - report under "Other"	
Greece	GR	None - report under "Other"	
Guam	GQ	Agana	AGN
Haiti	HA	None - report under "Other"	
Hong Kong	HK	None - report under "Other"	
Iceland	IC	Keflavik	KEF
Italy	IT	Naples	NAP
Jamaica	JM	None - report under "Other"	
Japan	JA	Atsugi Iwakuni Sasebo Yokosuka	ATS IWK SAS YOK
Ryukyu Islands, Southern	YQ	Camp Butler, Okinawa Naha, Okinawa	BUT NAH
Korea, Republic of	KS	None - report under "Other"	
Laos	LA	None - report under "Other"	
Malta	MT	None - report under "Other"	
Midway Islands	MQ	None - report under "Other"	
Morocco	MO	Port Lyantey-Kenitra	PLY
New Zealand	NZ	None - report under "Other"	
Panama	PN	None - report under "Other"	
Philippines	RP	Cubi Point Luzon Subic Bay	CBI LUZ SUB

COUNTRIES - CITIES/LOCATIONS (continued)

COUNTRIES	CODES	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Puerto Rico	RQ	Roosevelt Roads San Juan	RDS SJN
Ryukyu Islands, Southern	YQ	See Japan	
Spain	SP	Rota	RTA
Thailand	TH	None - report under "Other"	
Trust Territory of the Pacific Islands	TQ	None - report under "Other"	
United Kingdom	UK	London	LON
United States	US	Adak, Alaska Kodiak, Alaska	ADK KOD
		Kaneohe, Hawaii Pearl Harbor-Honolulu area, Hawaii	KAN PLH
United States Misc. Caribbean Islands	BQ	None - report under "Other"	
United States Misc. Pacific Islands	IQ	None - report under "Other"	
Virgin Islands	VQ	None - report under "Other"	
Wake Island	WQ	None - report under "Other"	

SPECIAL POWER OF ATTORNEY

(see sections 0121 and 0133(4)(a))

SPECIAL POWER OF ATTORNEY (for accused who request representation by appellate defense counsel)

KNOW ALL MEN BY THESE PRESENT:

That, I ______________________________, ________________,
Name and Rate/Grade SSAN

______________________________, having been convicted by ______________
Branch of Service Type of court

court-martial on ____________________, do hereby make, constitute
Date

and appoint my appellate defense counsel of record appointed under the provisions of Article 70, Uniform Code of Military Justice, 10 U.S.C. § 870, and paragraph 102, Manual for Courts-Martial, United States, 1969 (Rev.), for the defense of my case, my true and lawful attorney or attorneys for me in my name, place, and stead, and for my use and benefit, and as my act and deed, to accept service of the United States Navy Court of Military Review decision in my case and thereby start the running of the sixty (60) day appeal period within which I may petition the United States Court of Military Appeals for a grant of review; and in the event any part of my conviction is affirmed by the United States Navy Court of Military Review, to execute, file, and prosecute a petition for grant of review in the United States Court of Military Appeals under the provisions of Article 67, Uniform Code of Military Justice, 10 U.S.C. § 867, or when in his judgment he deems further review of my conviction unwarranted due to lack of meritorious grounds to be urged upon appeal, to waive my right to petition the United States Court of Military Appeals. I fully understand my statutory right, (Article 67(c), Uniform Code of Military Justice, 10 U.S.C. § 867(c)) to have actual personal service of the decision of the United States Court of Military Review on myself and I hereby voluntarily, knowingly, and consciously waive that right.

GIVING AND GRANTING to my attorney full power and authority to do and perform every act and thing requisite and necessary to be done in the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power in me of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may or shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ ____________ day of ____________________, 19____________.

______________________________(SEAL)
Signature of Accused

Signed, sealed, and delivered in the
presence of:

____
Witness

____
Witness

With the United States Armed Forces

At ____________________________
Location

I, ______ ____________________, the undersigned officer, do hereby certify that on this ____________________day of ________ 19___, before me, personally appeared ______________________
Name and Rate/Grade

______________, ____________________, whose home address is
SSAN

____

and who is known to me to be a member of the United States Armed Forces on active duty and to be the identical person who is described in, whose name is subscribed to, and who signed and executed the foregoing instrument, and having first made known to him the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and the same is executed in my capacity as a judge advocate under authority granted to me by Article 136, UCMJ 10 U.S.C. § 936.

____
Signature of Officer

____
Typed Name of Officer

____
SSAN, Grade, and Branch of Service

____
Command or Organization

____
Permanent Home Address

SPECIAL POWER OF ATTORNEY
(for accused who do not request representation by appellate defense counsel)

KNOW ALL MEN BY THESE PRESENTS:

That I, ______________________________, ____________,
Name and Rate/Grade SSN

____________________________, having been convicted by
Branch of Service

____________________________ court-martial on ____________,
Type of Court Date

do hereby make, constitute, and appoint the Director, Appellate Defense Division, Navy Appellate Review Activity, Office of the Judge Advocate General, Washington, D.C. 20374, and/or such appellate defense counsel designated by that Director, my true and lawful attorney or attorneys for me in my name, place, and stead, and for my use and benefit, and as my act and deed, to accept service of the United States Navy Court of Military Review decision in my case after notification to the Director, Appellate Defense Division, by the Judge Advocate General that he has been unable reasonably to accomplish personal service on me and thereby start the running of the sixty (60) day appeal period within which I may petition the United States Court of Military Appeals for a grant of review; and in the event any part of my conviction is affirmed by the United States Navy Court of Military Review, to execute, file, and prosecute a petition for grant of review in the United States Court of Military Appeals under the provision of Article 67, Uniform Code of Military Justice, 10 U.S.C. § 867, or when in his judgment such appellate defense counsel deems further review of my conviction unwarranted due to lack of meritorious grounds to be urged upon appeal, to waive my right to petition the United States Court of Military Appeals for a grant of review.

GIVING AND GRANTING to my attorney full power and authority to do and perform every act and thing requisite and necessary to be done in the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power in me of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may or shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal this ______________ day of ______________, 19___.

______________________________ (SEAL)
Signature of Accused

Signed, sealed, and delivered in the presence of:

____
Witness

____
Witness

With the United States Armed Forces

At ________________________________
Location

I, __________________________, the undersigned officer, do hereby certify that on this _____________ day of _______________, 19___, before me, personally appeared _____________________________
Name and Rate/Grade
______________, ________________, whose home address is _________
SSN

____
and who is known to me to be a member of the United States Armed Forces on active duty and to be the identical person who is described in, and whose name is subscribed to, and who signed and executed the foregoing instrument, and having first made known to him the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and the same is executed in my capacity as a judge advocate under authority granted to me by Article 136, UCMJ, 10 U.S.C. § 936.

____
Signature of Officer

____
Typed Name of Officer

____
SSN, Grade, and Branch of Service

____
Command or Organization

____
Permanent Home Address

REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE (See section 0135d)

UNITED STATES	[SPCM] [GCM] NCM ____________
	REQUEST FOR IMMEDIATE EXECUTION
v.	OF [BAD CONDUCT] [DISHONORABLE]
	DISCHARGE ADJUDGED ON ____________
[Name, service number, grade or	BY [SPECIAL] [GENERAL] COURT-MARTIAL
rate and armed service]	CONVENED BY ____________________
	[AT] [ON BOARD] ________________

To: [Officer exercising general court-martial jurisdiction]

1. I, the undersigned, the accused in the above-captioned case, hereby request the immediate execution of the above-described ____________________ [dishonorable] ____________________ [bad conduct] discharge and my release from the naval service.

2. Naval Clemency and Parole Board review pursuant to SECNAV Instruction 5815.3 series [has been completed] [is not required].

3. I received a copy of the decision of the Navy Court of Military Review in my case on ______________________.

4. I have had fully explained to me and I understand my right, under Article 67(c) of the Uniform Code of Military Justice, to petition the U. S. Court of Military Appeals for grant of review within 30 days from the date I received my copy of the decision of the Navy Court of Military Review.

5. I do not have an appeal pending before the U. S. Court of Military Appeals at this time, nor do I now intend to appeal; however, I understand that, if this request is granted, it will not affect my right to appeal if I later change my mind and decide to appeal.

6. I have discussed this matter with ________________________________, Name, grade, service number counsel of my own choice.

____
Signature of accused

CERTIFICATE

I, the undersigned officer of the grade, service number and branch of service below stated, certify that the above-named accused personally appeared before me this______ day of __________, 19___, at

REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE (continued)

_______________; I explained to him his right, under Article 67(c) of
Place

the Uniform Code of Military Justice, to petition the U. S. Court of Military Appeals for grant of review; I read aloud to him the foregoing request; and he thereafter signed the same in my presence and acknowledged that he did so as his free and voluntary act.

____
Signature

____
Name, grade, service number

RECORD OF AUTHORIZATION FOR SEARCH (See section 0148)

1. At ______________ on ______________ I was approached
Time Date

by ____ in his capacity
Name

as ____ who,
Duty[1]

having been first duly sworn,[2] advised me that he suspected

____ of ______________
Name Offense

____ and

requested permission to search his/her ____________________
Object or place[3]

for ____
Items[4]

2. The reasons stated to me for suspecting the above named person were:[5]

____

____

____

____

____

____

____

____

____

____

____

____

____

RECORD OF AUTHORIZATION FOR SEARCH (Continued)

3. After carefully weighing the foregoing information, I was of the belief that the crime of ________________________________ [had been] [was being] [was about to be] committed, that _______ __________________________ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated and that such items were [the fruits of crime] [the instrumentalities of a crime] [contraband] [evidence].

4. I have therefore authorized ______________________________ _____________________________ to search the place named for the property specified, and if the property be found there, to seize it.

____

Grade　　Signature　　Title

____

Date and time

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.

RECORD OF AUTHORIZATION FOR SEARCH (Continued)

2. Other than his/her own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God? (This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his/her prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.)

3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) Fruits of a crime (the results of a crime such as stolen objects): (2) Instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) Contraband (items, the mere possession of which is against the law -- marijuana, etc.); (4) Evidence of crime (example: bloodstained clothing of an assault suspect).

5. Before authorizing a search probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

a. An offense probably is about to be, is being, or has been committed; and

b. Specific fruits or instrumentalities of the crime, contraband or evidence of the crime exist; and

c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists.

If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

REQUEST FOR AUTHORIZATION
TO CONDUCT SEARCH AND SEIZURE

WITH THE UNITED STATES ARMED FORCES

AT ______________________________
(Location)[1]

1. I, ____,
(Name) (Organization or Address)

having first been duly sworn, state that[2] ____________________

____

____

____

2. I further state that[3] ______________________________________

____

____

____

____

____

____

____

3. In view of the foregoing, the undersigned requests that permission be granted for the search of[4] ____________________
(the person)

____
(and) (the quarters or billets) (and)

______________________________ and seizure of ________________
(the automobile)( )

____
(items searched for)

____

____

____
(Signature)

____
(Typed name and organization)

JURAT

I, ____________________________, do hereby certify that the foregoing request for authorization to conduct search and seizure was subscribed and sworn to before me this _____ day of _________, 19___, by ____________________________ (Name of person making statement), who is known to me to be ____________________________ (Status)[5]. And I do further certify that I am on this date empowered to administer oaths by authority of ____________________________ (Authority)[6].

____
(Signature)

____
(Typed name, grade, and Branch of Service)

____
(Command or Organization)

INSTRUCTIONS

1. Insert Country, State, and County in which request is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U.S. outside of the continental U.S."

2. In paragraph 1, set forth a concise factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional pages if necessary.

3. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property be be seized are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized is presently located on the person, premises, or place to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the request or on hearsay information which he has plus the underlying circumstances from which he has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the request should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the request has concluded that the informant, whose identity need not be disclosed, or his information was trustworthy. Use additional pages if necessary.

4. In paragraph 3, the person, premises, or place to be searched and the property to be seized should be described with particularity and in detail. The types of items which may be seized are set forth in paragraph 152, MCM, 1969 (Rev.).

5. "U.S. Armed Forces member on active duty," or "the spouse of a U.S. Armed Force member," or "a person serving with the Armed Forces," or other appropriate description of status.

6. "Manual of the Judge Advocate General of the Navy, section 2502a.(4)(b)", or "Art. 136, UCMJ", or other appropriate authority.

CONSENT TO SEARCH (See section 0148)

I, ____________ ____, have been advised that inquiry is being made in connection with ________________

____.

I have been advised of my right to not consent to a search of [my person] [the premises mentioned below].

I hereby authorize ____

______________________ [and] __________________________,

who [has] [have been] identified to me as ________________________

____
Position(s)

to conduct a complete search of my [person] [residence] [automobile] [wall locker] [   ] [   ] located at ______

____.

I authorize the above listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire.

This search may be conducted on ____________________________.
Date

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

____
Signature

WITNESSES

____

____

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See section 0149)

Suspect's Rights Acknowledgement/Statement

FULL NAME (ACCUSED/SUSPECT)	FILE/SERVICE NO.	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT	SOCIAL SECURITY NUMBER		DATE OF BIRTH
NAME (INTERVIEWER)	FILE/SERVICE NO.	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) I am suspected of having committed the following offense(s): ____________

____

____ ☐

(2) I have the right to remain silent; -- ☐

(3) Any statement I do make may be used as evidence against me in trial by court-martial; -- ☐

(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both.---------- ☐

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.-- ☐

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, -- ☐
and that,

(1) I expressly desire to waive my right to remain silent; -------------------- 1

(2) I expressly desire to make a statement; ---------------------------------- 2

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; -- 3

(4) I expressly do not desire to have such a lawyer present with me during this interview; -- 4

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. --- 5

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

The statement which appears on this page (and the following _____ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

COURT-MARTIAL CASE REPORT
NAVJAG 5813/2 (REV. 1-73)
S/N 0105-100-8161
INSTRUCTIONS ON REVERSE SIDE
☒ **FINAL REPORT**

REPORTS SYMBOL JAG 5813-1
CASE NUMBER - ENTER ON APPROPRIATE LINE
JUDACT MIL JUDGE: SP 1-74VA
GCM ________
DATE OF REPORT: 2 April 1973

TRIAL COUNSEL: COMPLETE ITEMS 1-7A AND DELIVER TO PRESIDING OFFICER PRIOR TO TRIAL

1. ACCUSED: A. NAME (LAST, FIRST, MIDDLE) DOE, John M.
B. PAY GRADE E-4
C. ORGANIZATION ☒ NAVY ☐ MARINE

2. CONVENING AUTHORITY CO USS UNSINKABLE (ABC-20)

3. LOCATION OF TRIAL (COMMAND AND GEOGRAPHICAL) COMFLOATFORLANT

4. REFERRAL ☐ GCM ☒ SPCM **DATE:** 29 Mar 1973

5. RELATED CASE(S): None

6. PERSONNEL: (NAME, GRADE AND SOURCE IDENTIFIED BY COMMAND AND GEOGRAPHICAL LOCATION)

A. TRIAL COUNSEL:
LT J. J. Smith, JAGC, USNR
Law Center, NAVBASE Portland

B. DEFENSE COUNSEL:
LT A. M. Jones, JAGC, USN
Law Center, COMNTC BANGOR

C. INDIVIDUAL COUNSEL:

D. MILITARY JUDGE: (1) WITHOUT MEMBERS ☒ (2) WITH MEMBERS ☐
LCDR F. C. Brown, JAGC, USN
Law Center, NAVBASE, Portland

7. A. CHARGES: (ARTICLES, NUMBER OF SPECIFICATIONS, EACH)	B. PLEAS	C. FINDINGS	D. DISMISSED
Art. 86			
(1) UA 3 Nov 72 - 17 Nov 72	G	G	
(2) UA 5 Aug 72 - 1 Nov 72	G	G	
Art. 121			
(1) Steal $60	NG	G	
(2) WrongApprop. $40	NG	G	

8. TIME SPENT IN COURT AND TRAVEL BY MILITARY JUDGE:
A. TRIAL **DATE** 29 Mar 1973 **DURATION** 1/2 **HOURS**
B. TOTAL HOURS: IN TRAVEL 2 **IN COURT** 2 1/2

9. MOTIONS TO DISMISS:
A. ☒ **SPEEDY TRIAL** ☐ **GRANTED** **B.** ☐ ________ ☐ **GRANTED**

10. ISSUES RESOLVED ADVERSE TO GOVERNMENT:
A. SEARCH AND SEIZURE ☐
B. SELF INCRIMINATION ☐
C. MENTAL CAPACITY ☐
D. MENTAL RESPONSIBILITY ☐

11. ANY PRIOR TRIAL OF THIS CASE? ☐ YES ☒ NO

12. THESE PROCEEDINGS TERMINATED BY MISTRIAL? ☐ YES ☒ NO

13. SENTENCE ADJUDGED:
A. DISCHARGE:
DISMISSAL ☐
DD ☐
BCD ☒
B. CONFINEMENT: ____ **YEARS** 6 **MONTHS**
C. FORFEITURES: $50 per month **FOR** 6 mos. **TOTAL** ☐
D. REDUCTION TO E-1
E. OTHER PUNISHMENT:

14. NEGOTIATED PLEA: ☐ YES ☒ NO (See JAG Manual secs. 0114b(1)(c) and 0114b(2)(d).)

SIGNATURE OF MILITARY JUDGE
J.G. Lieber Cdr. JAGC USN

TANGO NUMBER: (IF ANY)

ROUTING - PLEASE INITIAL		
NAVMARJUDACT	JUDGE ADVOCATE GENERAL	
OINC	CODE 20	CODE 02

A-1-o(1)

INSTRUCTIONS

1. THE CASE REPORT IS DESIGNED TO SERVE AS A STATISTICAL SOURCE FOR PLANNING PURPOSES AND TO AFFORD THE JUDGE ADVOCATE GENERAL AN EARLY SOURCE OF INFORMATION REGARDING CASES WHICH MAY EVOKE PUBLIC OR CONGRESSIONAL INTEREST. ANY CIRCUMSTANCES INDICATING THAT A CASE MAY BECOME THE SUBJECT OF SUCH INTEREST WILL BE NOTED BELOW. AN INTERIM REPORT SHALL BE SUBMITTED ON EXCEPTIONAL CASES ONLY.

2. IT IS THE RESPONSIBILITY OF THE TRIAL COUNSEL TO INSURE THAT ITEMS 1 THROUGH 7A OF THE CASE REPORT ARE COMPLETED IN TRIPLICATE AND DELIVERED TO THE MILITARY JUDGE IMMEDIATELY PRIOR TO TRIAL.

3. THE MILITARY JUDGE WILL COMPLETE THE HEADING OF THE REPORT FORM AND ITEMS 7B THROUGH 14, AS APPROPRIATE.

4. A CASE REPORT IS TO BE SUBMITTED FOR EACH ACCUSED, INCLUDING THOSE TRIED IN COMMON AND A SEPARATE SEQUENTIAL NUMBER ASSIGNED AS TO EACH.

5. MILITARY JUDGES OF THE U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY WILL ASSIGN CASE NUMBERS, TO INCLUDE A SEPARATE SERIES OF SEQUENTIAL NUMBERS FOR GCM'S AND SPCM'S, ACCORDING TO INSTRUCTIONS ISSUED BY THE OFFICER IN CHARGE.

6. DISTRIBUTION. MILITARY JUDGES OF THE JUDICIARY ACTIVITY WILL RETAIN ONE COPY FOR BRANCH OFFICE FILES AND FORWARD ORIGINAL AND ONE COPY TO:

OFFICER IN CHARGE
U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY
WASHINGTON, D.C. 20390

COMMENTS:

(USE ADDITIONAL SHEET AS NECESSARY)

A-1-o(2)

UNIFORM RULES OF PRACTICE BEFORE
NAVY-MARINE CORPS COURTS-MARTIAL

PREAMBLE

These rules govern the trial of cases by Navy and Marine Corps courts-martial presided over by a military judge. These rules are intended to simplify and make uniform those court-martial procedures which the military trial judge has the authority to control under appropriate provisions of the Uniform Code of Military Justice, the Manual for Courts-Martial, United States, 1969 (Revised edition), and such regulations as the Secretary of the Navy may prescribe.

Compliance with these rules will promote an orderly, expeditious and just disposition of court-martial cases, as well as ensure the efficient use of military judges. Nevertheless, the military judge may modify or suspend any rule as required by the facts of the case and interests of justice.

The American Bar Association's Code of Professional Responsibility has for some time been applicable to lawyers involved in court-martial proceedings in the Navy and Marine Corps by virtue of section 0142b, Manual of the Judge Advocate General. In addition, the American Bar Association's Code of Judicial Conduct is applicable. The following American Bar Association Standards also apply to judges, counsel, and clerical support personnel of Navy and Marine Corps courts-martial, unless they are clearly inconsistent with the Uniform Code of Military Justice, the Manual of the Judge Advocate General, and applicable departmental regulations:

a. Fair Trial and Free Press

b. The Function of the Trial Judge

c. The Prosecution Function and the Defense Function

The provisions of section 0115, Manual of the Judge Advocate General, relating to release of information, are also applicable to all court-martial personnel.

DECORUM OF COURTROOM

Rule 1. As a traditional mark of respect for the dignity of the military judicial system, as represented by the military judge, who is charged by law with presiding over the trial, all persons in the courtroom, without regard to grade, will rise when the trial judge enters or leaves.

Rule 2. The military judge, either at an early Article 39(a) session or at the time of assembling the court with members, should make known any special rules relating to conduct which the accused, the counsel, the witnesses, the members of the court, and others in the courtroom will be expected to follow in the courtroom, and which are not set forth in these rules, the Uniform Code of Military Justice, the Manual for Courts-Martial, or departmental regulations.

Rule 3. Except as otherwise provided by the president of the court or the military judge, all military personnel required to be present at trial, including court members, counsel, the accused, the reporter, the bailiff, and any guards, and all military witnesses, shall appear in appropriate service uniform. If a military witness is called unexpectedly, he may be permitted to appear in other than the appropriate service uniform to avoid unduly delaying the trial.

Rule 4. (Reserved.)

Rule 5. Spectators are encouraged to attend trial and shall be permitted to observe any trial unless otherwise determined by the trial judge. Spectators may enter and leave the courtroom during open sessions of the court-martial subject to rules established by the trial judge, but they will not be permitted to disturb or interrupt court proceedings by their conduct.

Rule 6. It is improper for a spectator, verbally, by facial expression, shaking or nodding of the head, or other conduct, to demonstrate agreement or disagreement with testimony or other procedures at a trial. Spectators who violate this rule may be ordered from the courtroom by the trial judge. Counsel is responsible for advising his client and his witnesses and friends of the demeanor that is expected of them.

Rule 7. Smoking will not be permitted in the courtroom during open sessions of the court; nor will food and beverages, other than water, be permitted.

Rule 8. Photographs, sound recordings designed for public release, and radio and TV broadcasts shall not be made in or from the courtroom during sessions of the trial.

CONDUCT OF COUNSEL

Rule 9. Counsel owes a duty both to his client and to the court. Counsel shall assist the trial judge to maintain throughout the trial a quiet and dignified atmosphere in keeping with the highest traditions of judicial proceedings. He has the responsibility to know and observe the relationship and decorum that must exist between counsel and the trial judge. Counsel are obligated to acquaint accused and witnesses with appropriate courtroom procedures and decorum and, insofar as possible, ensure their adherence.

Rule 10. Unless otherwise authorized or directed by the trial judge, counsel shall stand when addressing the trial judge or court members and when conducting examination or cross-examination of witnesses. Defense Counsel and accused will rise when entering pleas and when findings and sentence are announced.

Rule 11. Counsel should refrain from any familiarity among themselves, with the trial judge, with members of the court, or with witnesses in the presence of the accused or while the court is in session. Colloquy or argument between counsel serves no proper purpose in the trial and shall not be permitted.

Rule 12. Counsel should conduct the questioning of witnesses and arguments to the court at a reasonable distance from the witness or court. At the discretion of the trial judge, counsel may be required to question witnesses and present arguments from a lectern, the counsel table, or other prescribed place. Except to present an exhibit, counsel should not approach a witness without asking the permission of the trial judge; nor should he position himself so as to block the view between witnesses and the other participants in the trial.

Rule 13. During the argument of counsel, opposing counsel shall remain seated at his position at the counsel table. Counsel shall not walk about, talk to others, or otherwise conduct himself so as to divert the attention of the court or any member. Counsel will not leave the courtroom without permission of the trial judge.

Rule 14. Except with the permission of the trial judge, only one counsel for each side (or, if there are multiple accused, one counsel for each accused) may examine any one witness or address the court on any particular issue or motion.

Rule 15. When counsel initially enters an objection, he shall state only the objection and the basis for it. Before proceeding to argue an objection, counsel will request permission of the trial judge and ascertain whether argument will be entertained in open or in an out-of-court session. Although argument identifying legal issues and presenting authorities is ordinarily appropriate, an objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

Rule 16. After the trial judge has announced his decision upon an objection, counsel shall not make further comment or argument except with the express permission of the trial judge.

Rule 17. All requests for rereading of questions or answers shall be addressed to the trial judge.

Rule 18. Counsel shall confine their opening statements to what they expect the evidence to prove. Counsel will not use the opening statement to argue the case or to instruct as to the law.

Rule 19. In a closing argument, counsel may make a reasonable comment on the evidence and may draw such inferences from the testimony as will support his theory of the case, but he shall not assert his personal belief in the justice of his cause or in the guilt or innocence of the accused; nor may he personally vouch for the credibility or lack of credibility of witnesses.

Rule 20. The trial judge may initiate the voir dire examination by referring to the charge against the accused, and by putting to the members questions touching qualifications, including impartiality, to serve as members of the court in the case.

The trial judge shall also permit such additional questions by counsel as he deems reasonable and proper.

Rule 21. Witnesses should be treated with fairness and consideration; they should not be unnecessarily crowded, shouted at, ridiculed, humiliated, or otherwise abused.

Rule 22. A military witness should not salute the trial judge or the president of the court. Counsel should ensure that witnesses presented by them understand the physical setup of the courtroom, where they should go, and what they should do. Unsworn statements made by a defendant in mitigation and extenuation will be given from counsel table, or standing before the court.

Rule 23. The court will cooperate with commanders, senior staff officers, and doctors and other professional witnesses and may, in extraordinary circumstances, accommodate them by permitting them to appear and testify out of order. Counsel should discuss such arrangements in advance with opposing counsel and the trial judge.

Rule 24. Counsel will make arrangements before a session to ensure that his witnesses will be immediately available when they are called.

EXHIBITS

Rule 25. Any exhibit intended to be used or introduced at trial should be marked "For Identification" prior to trial to save time in open court. Prosecution exhibits will be numbered consecutively with Arabic numerals and defense exhibits with capital letters. Appellate exhibits will be consecutively numbered with Roman numerals and will contain the prefix "Appellate." In questioning a witness or addressing the court about an exhibit, counsel shall specify the exhibit number or letter.

Rule 26. If the proceedings will thereby be significantly expedited, counsel proffering an exhibit should have copies made for the trial judge and opposing counsel. Proposed prosecution exhibits should be shown to the defense counsel before trial. The defense counsel may follow the same procedure.

Rule 27. If an item of evidence cannot be included in the record of trial for any reason, counsel proffering it should arrange to have a suitable substitute provided. Such a substitute, however, shall include an accurate and detailed description, either pictorially or written, as to the exhibit's size, shape, weight, substance, color, and any other relevant physical characteristics.

Rule 28. If a copy of a document is to be substituted in the record of trial for a document that was proffered in evidence, only a permanent-type copy may be used, such as a Xerox copy. A nonpermanent-type copy, such as a Thermofax copy, may not be used.

SUPPORTING TRIAL PERSONNEL

Rule 29. Bailiff. A bailiff should be present at every trial to announce the opening and closing of the court, to obtain witnesses as they are called to testify, to ask everyone to rise when the trial judge enters or leaves the courtroom, and to take care of administrative errands during the trial. The trial counsel is responsible for briefing the bailiff as to his duties.

Rule 30. Guards. When appropriate, a guard shall be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum. Unless otherwise directed by the trial judge, guards, if necessary, shall not be permitted inside the bar of the courtroom. Arms or weapons, except when such are to be exhibits, or when otherwise authorized by the trial judge, will not be allowed inside the courtroom.

DOCKETING AND OTHER PROCEDURAL MATTERS

Rule 31. Each military judge, with the assistance of a docketing clerk, should maintain in his office an orderly trial calendar which will make efficient use of available time and provide for expeditious scheduling of trials when requested by the jurisdiction in which he serves.

Rule 32. When a trial judge must try cases in more than one jurisdiction, a term of court system may be used. This system will require a jurisdiction to plan the trial of cases during designated periods. In jurisdictions which normally have a great number of uncontested cases (i.e., AWOL), such cases should be consolidated for trial at a continuous session of the court on one or more designated days of the week.

Rule 33. Setting trial date.

a. As soon as practicable after referral of charges for trial, the trial counsel will cause the charges to be served on the accused. Thereafter, proceeding by means of an exchange of memorandums with the defense counsel as specified in paragraph 6 of JAGINST 5813.4D, the trial counsel will determine the earliest available trial date and will request assignment of a trial judge and a firm trial date from the U. S. Navy-Marine Corps Judiciary Activity or appropriate Judiciary Branch Office. Immediately thereafter the trial counsel will furnish the trial judge with the following:

(1) A copy of the charge(s) and specification(s),

(2) An advance copy of the Pretrial Information Report (NAVJAG 5813/4), and

(3) A copy of the convening order and all modifications thereto.

b. As preparation for trial proceeds, the trial counsel will keep the trial judge informed of any changes in the estimated duration of trial, and if known, whether the case will be contested. If there is any valid reason why a trial cannot be held on the assigned trial date, the trial judge may grant an enlargement of time on an informal basis upon seasonable application of either counsel; otherwise he shall call an Article 39(a) session for the purpose of requiring counsel to show cause why the trial should not proceed as scheduled.

c. If within 10 days following the referral of charges to trial by general court-martial, or five days following referral to a special court-martial, the trial and defense counsel have not presented the trial judge with a firm date of trial, the trial judge will call an Article 39(a) session on his own motion.

Rule 34. Preliminary matter - motions and hearings. Counsel shall be prepared to dispose of all motions at one preliminary hearing during an Article 39(a) session. As soon as practicable after service of charges, and prior to the expiration of the time period prescribed in Rule 33, a defense counsel who wishes to present motions will complete Pretrial Information Report (NAVJAG 5813/4) and forward it to the trial judge with a copy to the trial counsel listing those motions to be presented and indicating thereon whether the hearing will involve argument only or the presentation of evidence. As soon as counsel have determined that a preliminary hearing is necessary, they will arrange with the trial judge for a mutually satisfactory date.

Rule 35. Stipulations. If the defense anticipates moving for dismissal of any charge on the basis that the accused has been denied his right to a speedy trial, counsel for both sides should endeavor prior to trial to enter into and prepare a stipulation of fact as to the chronology of events. In any case in which trial counsel anticipates that the defense may raise an issue of speedy trial, trial counsel shall prepare a chronology of pretrial events in the case, even if the defense is not willing to stipulate to such facts. In such case, trial counsel should also be prepared to present evidence to prove the pretrial events.

If a motion or any other issue involves only a dispute between the parties as to the law or ultimate question of fact, and not as to the underlying facts, counsel should endeavor to enter into and prepare, prior to trial, a stipulation of fact or a stipulation of expected testimony covering these matters. Counsel may enter into such a stipulation for the limited purpose of obtaining a ruling on a motion or other pleading.

Rule 36. Instructions. In a trial with members, if either counsel desires any specialized instructions, including any summarization of the evidence, or any instructions not contained in the Military Judge's Guide, DA Pam 27-9, he should submit such instructions to the trial judge in writing prior to the commencement of the Article 39(a) instruction conference. If either counsel desires a modification of a standard instruction from DA Pam 27-9, he shall also submit his proposed modification to the trial judge in writing.

Rule 37. (Reserved.)

Rule 38. Civilian Counsel. In each case in which a civilian attorney is retained by the accused, the detailed defense counsel shall furnish a copy of these rules to that civilian attorney and request, if not previously accomplished, a written entry of appearance as counsel of record for the defendant, addressed to the convening authority, with a copy to the trial judge.

THE BAILIFF'S HANDBOOK

PREAMBLE

The trial is the most visible of all those procedures that, while dedicated to the proposition of equal justice under law, are designed for the protection of the community. A trial should be conducted in such a manner as to command the respect of the members of the community it serves and to assure them that law is functioning in a manner which will preserve order. Anything that detracts from an atmosphere of respect for the law and the authority of the court is to be avoided.

The trial of a case should not be burdened with resolution of frivolous or petty administrative matters. Every party to the trial should know what is expected of him, and the military judge and trial counsel should receive the assistance of a bailiff who has been carefully instructed in the performance of his duties.

The bailiff may look to the trial counsel for specific instruction as to his duties and for directions before and after each session of the court. While the court is in session, the bailiff is under the supervision of the military judge and will assist the military judge and counsel in the conduct of an orderly trial. The bailiff should be familiar with the location of the principal offices and facilities, such as the library, within the law complex in which he is serving.

DUTIES OF THE BAILIFF

Prior to Trial

1. The bailiff will report to the trial counsel in the uniform of the day with duty belt and appropriate cover at least thirty minutes before the commencement of each day's proceedings. Thereafter he will report to the military judge 15 minutes before the commencement of the day's proceedings.

2. The bailiff will see that the courtroom, including the spectator area and the deliberation room for court members, has a neat and orderly appearance, and will place the furniture in proper arrangement.

3. The bailiff will ensure that the judge has the desk supplies desired and that the court members have pencils and pads of voting paper in their deliberation room.

Entry and Departure of Military Judge

4. When counsel for both sides, the accused, the reporter, and, when appropriate, the court members, are all present in the courtroom, the bailiff will notify the military judge and escort him to the courtroom. When the bailiff enters the courtroom he will state: "All persons please rise." When the military judge announces a recess or adjournment the bailiff will again state: "All persons please rise." If need be, he will also instruct the spectators to stand fast until the military judge has departed from the courtroom. The military judge will advise the bailiff in the event there is to be any departure from this procedure.

5. According to the instructions of the military judge, the court will be formally opened at the commencement of each day of the trial at which spectators are in attendance. On those occasions the bailiff will state:

> "All persons please rise. A (general) (special) court-martial convened by ____________________ is now in session, Military Judge ______________ (Captain) (Colonel) (Commander) (________) U. S. (Navy) (Marine Corps) presiding."

Entry of Court Members

6. When the court members enter the courtroom, and also when the court members stand to be sworn, the bailiff will announce: "Everyone, please stand," in a voice that can be heard by all spectators (unless advised of a different procedure by the judge).

Spectators and Members of News Media

7. The bailiff should be aware that military trials are open and that spectators and members of the news media are welcome in the courtroom to hear and observe the trial proceedings (unless otherwise instructed by the judge). He should see that they can enter the courtroom, be seated and leave quietly while the court is in session.

8. As the law does not permit picture taking or any type of broadcasts in the courtroom, the bailiff will not permit that type of equipment to be taken into the courtroom. Any problems concerning this matter should be brought to the attention of the trial counsel without delay.

9. Courtroom rules do not permit spectators to eat, sleep, smoke, or engage in conversation while the court is in session. The bailiff should quietly and diplomatically inform the offenders of these rules.

10. Anyone talking, or making noise, in the halls that is distracting in the courtroom will be informed by the bailiff that the court is in session and they can be heard in the courtroom.

11. Rowdiness and violence are not unknown in the courtroom. The bailiff must be alert and prepared to take immediate steps to suppress unruly behavior.

Court Members - In Closed Session

12. When the court members are in closed session, only the members may be permitted in the deliberation room. Therefore, the bailiff will not enter that room or permit anyone else to enter during the closed session.

13. The bailiff is the only contact between the court members and the parties to the trial during the periods the court members are deliberating. The bailiff will be available to the court members outside their deliberation room and immediately notify the trial counsel, defense counsel, and military judge when the court members are ready for the court to be reopened.

14. If the bailiff is instructed to deliver any item or message to the court members in closed session, he must first inform the judge and obtain his approval.

Miscellaneous Duties During the Trial

15. The bailiff will be prepared to furnish the following services:

a. Summon the court members to the courtroom at the beginning of each session of court when advised by the military judge or trial counsel.

b. Collect written questions from the court members upon the judge's request and hand them to the judge or trial counsel as instructed.

c. Summon witnesses to the courtroom when requested by counsel.

d. Deliver findings and sentence worksheets to the president of the court when instructed to do so.

e. Deliver items of evidence to the deliberation room, if instructed to do so by the military judge, when the court members retire to the deliberation room.

f. Perform administrative errands during the trial as requested by the military judge and trial and defense counsel.

Attitudes and Relation of the Bailiff to the Issues and Parties of the Trial

16. The bailiff should remain neutral throughout the trial of a case. That is, he should not assume a partisan attitude toward either side -- the prosecution or the defense. The bailiff should never participate in any discussion of the merits of the case and should never attempt to predict the outcome of the trial. He should also avoid making any comments on the performance of counsel for either side or on the testimony of witnesses.

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT OF RIGHTS
WHEN ATTACHED TO OR EMBARKED IN A VESSEL
(*See* subsection 0101d)

I, ______________________________, SSN ________________,
(Name and grade of accused)
assigned or attached to ______________________________,
have been informed of the following facts and rights:

1. That I am suspected of having committed the following violation(s) of the Uniform Code of Military Justice:

____

____

____

____

____

2. That it is contemplated that my case will be referred to (captain's mast) (office hours);

3. That, because I am attached to or embarked in a vessel, I do not have the right to demand trial by court-martial in lieu of (captain's mast) (office hours);

4. That, at (captain's mast) (office hours), I will receive a hearing at which I will be accorded the following rights:

a. To be present before the officer conducting the hearing;

b. To be advised of the offense(s) of which I am suspected;

c. To not be compelled to make any statement regarding the offense(s) charged and I realize that if I make any statement it may be used against me;

d. To be present during the presentation of all information against me, including testimony of witnesses in person or by the receipt of their written statement(s), copies of such statement(s) (to be) (having been) furnished to me;

e. To have made available to me for my inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

f. To have full opportunity to present any matter in defense -- that is, evidence tending to show that I did not commit the offense(s) charged against me -- as well as matters in extenuation or mitigation -- that is, any information tending to explain the circumstances surrounding the commission of the offense(s), or any other information which might justify the imposition of a lighter punishment than might otherwise be imposed;

g. To be accompanied at the hearing by a personal representative to speak on my behalf. I understand that my command has no obligation to provide such a personal representative and that it is my own obligation to obtain and arrange for the presence of such a personal representative if I wish one. The personal representative need not be a lawyer.

5. That, if punishment is imposed at (captain's mast) (office hours), I will have the right to appeal to higher authority, within a reasonable time, which normally is fifteen days after the punishment is imposed, if I consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

6. That, if not otherwise contemplated, I may request that the (captain's mast) (office hours) be open to the public, to the extent permitted by available space, unless security interests dictate otherwise. I may also request to confer privately with the officer who will hold the hearing, to relate matters which, in my opinion, are of a personal nature.

(Signature of accused and date)

(Signature of witness and date)

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT AND WAIVER OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL

[Record cannot be used in aggravation in event of later court-martial unless lawyer serves as personal representative (See subsection 0101d)]

I, ______________________________, SSN ____________________,
(Name and grade of accused)
assigned or attached to ________________________________,
have been informed of the following facts and rights:

1. That I am suspected of having committed the following violation(s) of the Uniform Code of Military Justice:

____

____

____

____

____;

2. That it is contemplated that my case will be referred to (captain's mast) (office hours);

3. That, at (captain's mast) (office hours), I will receive a hearing at which I will be accorded the following rights:

a. To be present before the officer conducting the hearing;

b. To be advised of the offense(s) of which I am suspected;

c. To not be compelled to make any statement regarding the offense(s) charged and I realize that if I make any statement it may be used against me;

d. To be present during the presentation of all information against me, including testimony of witnesses in person or by the receipt of their written statement(s), copies of such statements (to be) (having been) furnished to me;

e. To have made available to me for my inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

f. To have full opportunity to present any matter in defense -- that is, evidence tending to show that I did not commit the offense(s) charged against me -- as well as matters in extenuation or mitigation -- that is, any information tending to explain the circumstances surrounding the commission of the offense(s), or any other information which might justify the imposition of a lighter punishment than might otherwise be imposed;

g. To be accompanied at the hearing by a personal representative to speak on my behalf. I understand that my command has no obligation to provide such a personal representative and that it is my own obligation to obtain and arrange for the presence of such a personal representative if I wish one. The personal representative need not be a lawyer.

4. That, if punishment is imposed at (captain's mast) (office hours), I will have the right to appeal to higher authority, within a reasonable time, which normally is fifteen days after the punishment is imposed, if I consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

5. That, if not otherwise contemplated, I may request that the (captain's mast) (office hours) be open to the public, to the extent permitted by available space, unless security interests dictate otherwise. I may also request to confer privately with the officer who will hold the hearing, to relate matters which, in my opinion, are of a personal nature.

6. That, I have the right to demand trial by court-martial in lieu of (captain's mast) (office hours).

7. Knowing and understanding all of my rights as set forth in paragraphs one through six above, my desires are as follows:

(check one, as appropriate)

__________ I demand trial by court-martial in lieu of (captain's mast) (office hours).

__________ I do not demand trial by court-martial in lieu of (captain's mast) (office hours).

(Signature of accused and date)

(Signature of witness and date)

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT AND WAIVER OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL

[Record may be used in aggravation in event of later court-martial (See subsection 0101d and section 0117)]

I, ______________________________, SSN ____________________,
(Name and grade of accused)
assigned or attached to ______________________________,
have been informed of the following facts and rights:

1. That I am suspected of having committed the following violation(s) of the Uniform Code of Military Justice:

____

____

____

____

____

2. That it is contemplated that my case will be referred to (captain's mast) (office hours);

3. That, at (captain's mast) (office hours), I will receive a hearing at which I will be accorded the following rights:

a. To be present before the officer conducting the hearing;

b. To be advised of the offense(s) of which I am suspected;

c. To not be compelled to make any statement regarding the offense(s) charged, and I realize that if I make any statement it may be used against me;

d. To be present during the presentation of all information against me, including testimony of witnesses in person or by the receipt of their written statement(s), copies of such statements (to be) (having been) furnished to me;

e. To have made available to me for my inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

f. To have full opportunity to present any matters in defense -- that is, evidence tending to show that I did not commit the offense(s) charged against me -- as well as matters in extenuation or mitigation -- that is, any information tending to explain the circumstances surrounding the commission of the offense(s), or any other information which might justify the imposition of a lighter punishment than might otherwise be imposed;

g. To be accompanied at the hearing by a personal representative to speak on my behalf. I understand that my command has no obligation to provide such a personal representative and that it is my own obligation to obtain and arrange for the presence of such a personal representative if I wish one. The personal representative need not be a lawyer.

4. That, if punishment is imposed at (captain's mast) (office hours), I will have the right to appeal to higher authority, within a reasonable time, which normally is fifteen days after the punishment is imposed, if I consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

5. That, if not otherwise contemplated, I may request that the (captain's mast) (office hours) be open to the public, to the extent permitted by available space, unless security interests dictate otherwise. I may also request to confer privately with the officer who will hold the hearing, to relate matters which, in my opinion, are of a personal nature.

6. That I have the right to demand trial by court-martial in lieu of (captain's mast) (office hours). That I have the right to obtain advice of rights from a lawyer prior to deciding whether I should demand trial by court-martial in lieu of (captain's mast) (office hours). Should I desire to obtain such advice from a lawyer, I understand that a military lawyer will be made available to advise me, free of charge, or in the alternative, I may obtain such advice from a civilian lawyer at my own expense. I understand that any action to give up these rights must be taken voluntarily by me after careful consideration. Therefore, I desire to: (check one)

________Talk to a lawyer prior to deciding what I should do.

________Voluntarily, knowingly, and intelligently, give up my right to talk to a lawyer.

____
(Signature of Accused)

____
(Signature of Witness)

____
(Date)

Note: If the accused states that he or she desires to obtain advice of rights from a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours), the remainder of this form shall not be completed until the accused has been given a reasonable opportunity to obtain this advice of rights.

7. Knowing and understanding all of my rights as set forth in paragraphs one through six above, my desires are as follows: (check one or more, as applicable)

________ I demand trial by court-martial in lieu of (captain's mast) (office hours).

________ I do not demand trial by court-martial in lieu of (captain's mast) (office hours).

  ________ My decision not to demand trial by court-martial in lieu of (captain's mast) (office hours) was made after talking to ____________ ____________________, a lawyer.

  ________ My decision not to demand trial by court-martial in lieu of (captain's mast) (office hours) was made by me without obtaining advice of rights from a lawyer. I made this decision freely and voluntarily, without any promises or threats being made to me.

____
(Signature of Accused)

____
(Signature of Witness)

____
(Date)

CAPTAIN'S MAST/OFFICE HOURS GUIDE

(NOTE: The formalities prior to and at the termination of the captain's mast or office hours normally are determined by custom and tradition in the Navy and Marine Corps.)

CO: You are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

____

____

____

You do not have to make any statement regarding the offense(s) of which you are accused or suspected and any statement made by you may be used as evidence against you. (Note: If it is reasonably foreseeable that the accused's statements during the captain's mast/office hours proceedings may be considered for introduction in evidence in a later court-martial, an explanation of rights and a waiver, in the format of Appendix A-1-n of the JAG Manual, will have to be obtained from the accused, during the hearing, before proceeding further.)

CO: You are advised that a captain's mast/office hours is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by courts-martial do not apply at captain's mast/office hours.

CO: I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining at this hearing. (Note: This statement will be either JAGMAN Appendix A-1-r, A-1-s or A-1-t.)

CO: Do you understand this statement and do you understand the rights explained therein?

ACC: ____.

CO: Do you have any questions about them or do you wish to make any requests?

ACC: ____

____.

CO: [To witness (if any are present)] What can you tell me about the accused's involvement in (these) (this) offense(s)?

WIT: ______________________________

____

____

OR

CO: [To witness(es) who has/have previously provided written statement(s) when accused and CO both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

WIT: ______________________________.

CO: Do you have anything to add to or change in your statement(s)?

WIT: ______________________________

____

______________________________.

CO: (To accused) Would you like me to ask any further questions of this witness?

ACC: ______________________________.

CO: (After all witnesses are questioned) I have before me the following (documents) (statements) (other physical evidence) that will be considered by me. Have you been given the opportunity to examine them?

ACC: ______________________________.

CO: (If the answer is "no," offer the accused the opportunity to examine the evidence.)

CO: Is there anything that you wish to offer? (If the answer is "yes," permit the accused the opportunity to call his witnesses, make a personal statement in defense, and present other evidence.)

ACC: ______________________________.

CO: Are there any other witnesses you would like to call or any other evidence you would like to present?

ACC: ____.

CO: Is there anything that you wish to offer that would lessen the seriousness of (this) (these) offense(s) or mitigate them?

ACC: ____.

CO: (To witness) What can you tell me about (accused's name) performance of duty?

WIT: ____.

CO: (To accused) Is there anything else you would like to present?

ACC: ____.

CO: I have determined the offense(s) involved herein to be minor and punishable at captain's mast/office hours. I further find you (have not committed the offense(s) charged) (have committed the offense(s) charged) (have committed the following offense(s) charged)________________________.

CO: (Accordingly, I impose the following punishment:)

(____)

CO: You are advised that you have the right to appeal this punishment to (identify the superior authority by name and organizational title). Your appeal must be made within a reasonable time -- which is normally 15 days. Following this hearing, ____________________ will advise you more fully of this right to appeal. Do you understand?

ACC: ____.

CO: You are dismissed.

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT OF APPEAL RIGHTS

I, ______________________________, SSN ____________________
(Name and grade of accused)
assigned or attached to ______________________________, have been informed of the following facts concerning my rights of appeal as a result of (captain's mast) (office hours) held on ________________:

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Fifteen days after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the fifteen-day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust;

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the pay grade of E-4 or above or was in excess of: arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, or detention of 14 days' pay, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

______________________________ ______________________________
(Signature of Accused & Date) (Signature of Witness & Date)

APPENDIX SECTION – 3

PRIVACY ACT STATEMENT FORMAT -- JAG MANUAL INVESTIGATION OR CLAIMS INVESTIGATION

1. AUTHORITY: "44 U.S.C. § 3101; 5 U.S.C. § 301;" [Specify, if possible, other statutory authority listed below that is peculiarly applicable to the matter under investigation.

Authorities Applicable to Various Investigations

(a) Requirement that enlisted men make up time lost due to misconduct or abuse of drugs or alcohol. 10 U.S.C. § 972(5).

(b) Retirement or separation for physical disability. 10 U.S.C. §§ 1201-1221.

(c) Executive Order 11476, "Manual for Courts-Martial," par. 133b.

(d) Uniform Code of Military Justice, 10 U.S.C. §§ 815, 832, 869, 873, 935, 936, 938-940.

(e) Military Claims Act, 10 U.S.C. § 2733.

(f) Foreign Claims Act, 10 U.S.C. §§ 2734, 2734a, 2734b.

(g) Emergency Payment of Claims, 10 U.S.C. § 2736.

(h) Non-Scope Claims, 10 U.S.C. § 2737.

(i) Duties of Secretary of the Navy, 10 U.S.C. § 5031.

(j) Duties of the Office Chief of Naval Operations, 10 U.S.C. §§ 5081-5082, 5085-5088.

(k) Duties of the Bureaus and Offices of the Department of the Navy and duties of the Judge Advocate General, 10 U.S.C. §§ 5131-5153.

(l) Duties of the Commandant of the Marine Corps, 10 U.S.C. § 5201.

(m) Reservist's Disability and Death Benefits, 10 U.S.C. § 6148.

(n) Requirement of Exemplary Conduct, 10 U.S.C. § 5947.

(o) Promotion of Accident and Occupational Safety by Secretary of the Navy, 10 U.S.C. § 7205.

(p) Admiralty Claims, 10 U.S.C. § 7622-7623.

(q) Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680.

(r) Financial Liability of Accountable Officers, 31 U.S.C. §§ 82a, 89-92, 95a.

(s) Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. §§ 240-243.

(t) Federal Claim Collection Acts, 31 U.S.C. §§ 71-75, 951-953.

(u) Forfeiture of Pay for Time Lost Due to Incapacitation caused by Alcohol or Drug Use, 37 U.S.C. § 802.

(v) Eligibility for certain veterans' benefits, 38 U.S.C. § 105.

(w) Postal Claims, 39 U.S.C. § 712.

(x) Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653.

(y) Public Vessels Act, 46 U.S.C. §§ 781-790.

(z) Suits in Admiralty Act, 46 U.S.C. §§ 741-752.

(aa) Admiralty Extension Act, 46 U.S.C. § 740.

(bb) Transportation Safety Act, 49 U.S.C. § 1901.]

2. PRINCIPAL PURPOSE(S): "The information which will be solicited is intended principally for the following purpose(s):"

[Specify each purpose listed below for which the record of the particular investigation could reasonably be used:

a. "Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave."

b. "Determinations on disciplinary or punitive action."

c. "Determinations on liability of personnel for losses of, or damage to, public funds or property."

d. "Evaluations of petitions, grievances, and complaints."

e. "Adjudication, pursuit, or defense of claims for or against the Government or among private parties."

f. "Other determinations, as required, in the course of naval administration."

g. "Public information releases."

h. "Evaluations of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy."]

3. ROUTINE USES: "In addition to being used within the Departments of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veterans and survivors benefits; to Servicemen's Group

Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions."

4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

a. [Where disclosure is voluntary, as usually is the case, use one of the following statements, or a combination of the following statements, as applicable:

(1) (Where an individual is a subject of an investigation for purposes a. or b., above: "Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determinations] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.")

(2) (Where an individual is a subject of an investigation for purpose c., above: "Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held pecuniarily liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.")

(3) (Where the individual is a claimant or potential claimant in an investigation for purpose e., above: "Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation.")

(4) (Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose e., above; "Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in naval medical facilities.")

(5) (In any other case: "Disclosure is voluntary, and if you do not provide the requested information, any determinations or evaluations made as a result of this investigation will be made on the basis of the evidence that is contained in the investigative record.")]

b. [In the unusual situation where a specific statute, regulation, or lawful order of competent authority mandatorily directs an individual to disclose particular information for the Government's benefit in furtherance of a Government interest, policy, or objective, the following statement should be used: "Disclosure of (specify the particular relevant information required) is mandatory under (cite the statutue, regulation, or order), and refusal to disclose that information will subject you to possible disciplinary or criminal proceedings. Disclosure of any other information requested is voluntary, (and there will be no adverse effects if you elect not to disclose it) (but election not to disclose the information could. . .)."]

NAVJAG 5800/36 (Rev. 9-77)

RECORD OF DISCLOSURE

THE ATTACHED RECORD CONTAINS PERSONAL INFORMATION CONCERNING AN INDIVIDUAL. USE AND DISCLOSURE THEREOF IS GOVERNED BY SECNAVINST 5211.5 SERIES. UNAUTHORIZED DISCLOSURE OF PERSONAL INFORMATION FROM THIS RECORD COULD SUBJECT THE DISCLOSER TO CRIMINAL PENALTIES.

INSTRUCTIONS: This sheet is to remain affixed as a permanent part of the record described below. An appropriate entry must be made below each time the record or any information from the record is viewed by, or furnished to, any person or agency, including the subject of the record, except: (1) disclosures to DoD personnel having a need to know in the performance of their official duties and (2) disclosure of items listed in subparagraph 7 a (2) of SECNAVINST 5211.5 series.

TITLE AND DESCRIPTION OF RECORD

DATE OF DISCLOSURE	METHOD	PURPOSE OR AUTHORITY	NAME AND ADDRESS OF PERSON OR AGENCY TO WHOM DISCLOSED (AND SIGNATURE IF DISCLOSURE IS MADE IN PERSON)

IMPORTANT-READ AND COMPLY WITH THIS PAGE

NAVJAG 5800/38 (Rev. 9-77)(Back)

DATE OF DISCLOSURE	METHOD	PURPOSE OR AUTHORITY	NAME AND ADDRESS OF PERSON OR AGENCY TO WHOM DISCLOSED (AND SIGNATURE IF DISCLOSURE IS MADE IN PERSON)

APPENDIX SECTION – 4

COURT OF INQUIRY

a. Appointing order (See section 0402c)

COMMANDER AMPHIBIOUS FORCE
UNITED STATES ATLANTIC FLEET

(File information)
_____Feb 19___

From: Commander Amphibious Force, U. S. Atlantic Fleet
To: Rear Admiral J__________B. T____________, USN, 000-00-0000/1100

Subj: Court of Inquiry to inquire into the circumstances surrounding an explosion which occurred in USS__________________(_____), on________February 19___

Ref: (a) JAG Manual

1. In accordance with section 0402 of reference (a), a Court of Inquiry is hereby appointed to inquire into the circumstances surrounding an explosion which occurred in USS________________(_____), on__February 19__. The Court will convene in USS__________(_______), at 1000 on__February 19__, or as soon thereafter as practicable.

2. The Court shall consist of you as president, Captain D__________E. F__________, USN, 000000/1100, and Captain G___________H. I___________, USNR, 000000/1105, as members. Commander J_____________K. L___________, JAGC, USN, 000-00-0000/2500, a lawyer qualified in the sense of article 27(b) of the Uniform Code of Military Justice, is hereby designated counsel for the Court.

3. The Court is directed to inquire into all the facts and circumstances connected with the explosion, the damage resulting therefrom, and deaths of and injuries to naval personnel; as appropriate, to perform the duties of an inquest; and to fix individual responsibility for the incident. After deliberation the Court shall submit its findings of fact, opinions and recommendations. The Court will express its opinion as to the line of duty and misconduct status of any injured personnel and will recommend administrative or disciplinary action, as appropriate.

4. The Court is directed to notify Commander M_________N. O_________, USN, 000-00-0000/1100, of the time and place of the meeting of the Court and that he is a party to the inquiry and to accord him the rights of a party pursuant to the provisions of section 0304 of reference (a). The Court is (not) authorized to designate additional parties to the inquiry during the proceedings (as may be appropriate). (As to the duty of the Court to designate parties, attention is particularly invited to section 0302d(2) of reference (a)).

5. The Court is directed to take the testimony of witnesses under oath and to submit a verbatim record of the proceedings.

6. By signed copy of this appointing order, Commanding Officer, USS_________(______), is directed to furnish the necessary reporters and other clerical assistance to the Court for the purpose of recording the proceedings and preparing the record of this Court of Inquiry.

A______________J. L________________
Vice Admiral, U. S. Navy
Commander Amphibious Force
U. S. Atlantic Fleet

Copy to:
CINCLANTFLT
CO USS________(___)
Members
Counsel
Party

b. Modification to the Appointing Order (See section 0402e)

COMMANDER AMPHIBIOUS FORCE
UNITED STATES ATLANTIC FLEET

(File information)
____Feb 19______

From: Commander Amphibious Force, U. S. Atlantic Fleet
To: Rear Admiral J_____B. T_________, USN, 000-00-0000/1100

Subj: Change in membership of court of inquiry

1. Captain S_______T. U_____, USN, 000-00-0000/1100, is hereby appointed a member of the court of inquiry of which you are president convened by my appointed order of_______ February 19___, vice Captain D_______R. F________, U. S. Navy, hereby relieved.

A___________J. L__ _____________
Vice Admiral, U. S. Navy
Commander Amphibious Force
U. S. Atlantic Fleet

Copy to:
CINCLANTFLT
CO USS______(_____)
Members
Counsel
Party

c. Letter of transmittal (See section 0435c)

Note: The president forwards the record of the proceedings of the court of inquiry to the convening authority by a short covering letter of transmittal.

From: Rear Admiral J_______B. T__________, USN, 000-00-0000/1100
To: Commander Amphibious Force, U. S. Atlantic Fleet

Subj: Court of Inquiry to inquire into the circumstances surrounding an explosion which occurred in USS_________(____) on___February 19___

Ref: (a) COMPHIBLANT AO ser_______of___Feb 19___

Encl: (1) Subject record of proceedings

1. As directed by reference (a), a Court of Inquiry was convened on___February 19___. The original record and____complete copies thereof are forwarded herewith as enclosure(1).

J____________B. T_____________

d. Endorsement of the convening authority (See section 0436)

FIRST ENDORSEMENT on RADM J________B. T____________'s ltr of ________________________

From: Commander Amphibious Force, U. S. Atlantic Fleet
To: Judge Advocate General
Via: Commander in Chief, U. S. Atlantic Fleet

Subj: (Same)

1. Readdressed and forwarded.

2. The court failed to accord the rights of a party to_____________; or

Opinion 6 of the investigative report is not substantiated by the findings of fact as__________; or

The evidence of record is clear and convincing that the (injuries) (disability) of Lieutenant_____________(were) (was) the direct result of his intemperate and excessive use of_________; or

Opinion 6 and recommendation 2 of the court's report are (disapproved) (disapproved in part) (approved in part)___________________; or

A letter of (reprimand) (admonition) has been issued to Lieutenant________________ as a result of this inquiry in accordance with article 15 of the Uniform Code of Military Justice, chapter XXVI of the Manual for Courts-Martial, and section 0102 of the Manual of the Judge Advocate General; or

Subject to the foregoing remarks, the proceedings, findings of fact, opinions and recommendations of the court of inquiry in this case are approved; or

The record is returned for further inquiry into____________; or_______________.

A_____________J. L________________
Vice Admiral, U. S. Navy
Commander Amphibious Force
U. S. Atlantic Fleet

e. Record of proceedings of court of inquiry (See section 0435)

RECORD OF PROCEEDINGS

of a

COURT OF INQUIRY

convened on board

USS__________(_____)

by order of

Commander Amphibious Force

United States Atlantic Fleet

To inquire into an explosion in

USS________(___) which occurred on

___February 19___

Ordered on___February 19____ 1/-5/

Note:

1/ This is the date of the appointing order.

2/ A copy of the findings of fact, opinions and recommendations will be prefixed to the record.

3/ The record of proceedings shall be prepared on legal-size paper.

4/ Index in lengthy cases: An index is required whenever a record exceeds 20 pages. The index shall list the witnesses, a descriptive title of their duties in relation to the incident (e.g., Officer-of-the-Day, Engineer Officer, Navigator), whether called by the "Court" or "Party", and the page numbers on which their testimony appears. Exhibits, briefly described, offered or admitted in evidence, shall be listed in chronological order showing the page at which each was admitted in evidence.

5/ Appointing Order: The original appointing order follows the cover page and is lettered "A". Amendments or modifications thereto are lettered "B", "C", et cetera. When an index is required, it precedes the appointing order. Written communications with the convening authority will follow the appointing order and any amendments or modifications thereto.

Court meets.

-FIRST DAY-

On board
USS__________(______)
U. S. Naval Base
Norfolk, Virginia
Wednesday___Feb 19___

The court met at________. (Insert time, e.g., 0830.)

Present:

Rear Admiral J________B. T__________, U. S. Navy;
Captain S____________T. U____________, U. S. Navy; and
Captain G____________H. I____________, U. S. Naval Reserve, members.
Commander J__________K. L____________, JAGC, U. S. Navy, counsel for the court.

The court was cleared and the counsel for the court read the appointing order, original prefixed, marked "A", and an amendment thereto, original prefixed marked "B".

All matters preliminary to the inquiry having been determined, and the court having decided to sit with open doors, the court was opened.

Party and counsel enter.

Commander M__________N. O____________, U. S. Navy, entered as a party to the inquiry and introduced Lieutenant P___________A. R_________, JAGC, U. S. Naval Reserve, as his counsel (qualified in accordance with article 27(b) of the Uniform Code of Military Justice). Lieutenant R____________took seat as counsel.

Note: If a party enters and waives his right to be present or to be represented by counsel, this shall be reported verbatim. If any designated party or his counsel is absent the record shall indicate the absence, the reason therefor if known, and whether or not the party had been notified that he was a party and of the time and place of the meeting of the court.

Swearing the reporter, members and counsel for the court.

The appointed reporter, W________E. D_________, yeoman first class, U. S. Navy, the members of the court, and counsel for the court were sworn.

Note: Interpreters and assistant counsel, if any, also shall be sworn at this time.

Note: Informing the party or parties of their rights is accomplished at this time. The counsel informs the interested party or parties of their rights in accordance with section 0304; and this is reported verbatim. The record will clearly show that each has been designated as a party. Several parties may be informed of their rights at the same time. See section 0306 for additional rights of a person who has been injured.

Right to challenge accorded.

The party objected to Captain G__________H. I__________, U. S. Naval Reserve, as a member because Captain I____________had formed an opinion that the party was guilty of culpable conduct with regard to the question of the responsibility for the explosion.

The challenged member replied as follows:

* * * * * * *

Upon request of the party, the challenged member took the stand, was duly sworn and was examined as follows:

VOIR DIRE EXAMINATION

Questions by counsel for Commander O_______________, party:

Q.____________________?
A.____________________.

Questions by counsel for the court:

Q.____________________?
A.____________________.

Neither counsel for the court, the court, nor the party desired to examine the witness further. The witness resumed his seat as a member of the court.

Ensign A____________I. K____________, U. S. Navy, was called as a witness by counsel for the court, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A.__________________.
Q.__________________?
A.__________________.

CROSS EXAMINATION

Questions by Commander O___________, party:

Q.__________________?
A.__________________.

Neither counsel for the court, the court, nor the party desired to examine the witness further. The witness was duly warned and withdrew.

The court closed at __(Indicate time),___ February 19___. The challenged member withdrew from the courtroom.

Challenge sustained.

The court opened at_____, ___February 19___.

All persons connected with the inquiry who were present when the inquiry closed were again present. The president announced that the challenge of the party was sustained and that Captain I____________was relieved as a member and excused.

Captain I_____________withdrew from his seat as a member.

Note:

1/ If the challenge reduced the number of members to less than three, the court would proceed as follows:

The number of members being reduced to less than three, the court directed the counsel for the court to inform the convening authority of this fact.

2/ If the court, after the challenge had three or more members remaining, it could proceed; however, the convening authority should be informed of the excusing by the court of the challenged member and the court would then proceed as follows:

The number of members remaining after excusing the challenged member being not less than three, the court determined to proceed. Counsel was instructed to inform the convening authority that Captain I__________, U. S. Naval Reserve, was challenged by an interested party and excused by the court.

3/ All communications with the convening authority will be in writing and will be made part of the record.

Adjournment.

The court adjourned at_____, ___February 19___(to await the appointment of a new member).

-SECOND DAY-

On board
USS____________(_____)
U. S. Naval Base
Norfolk, Virginia
Thursday, ___Feb 19___

The court met at _____.

All persons connected with the court who were present when the court adjourned were again present.

Counsel for the party absent.

Continue the above entry by stating "except Lieutenant R_____________, counsel for the party who was called as a witness in a general court-martial." Commander O_________, the party stated: "I waive my right to have counsel present during this session of the court."

Note: When the party is represented by counsel and the counsel is not present, the record shall show verbatim accused's waiver of his right to have counsel present, if such be the case.

Communication from convening authority read.

Counsel for the court read a communication from the convening authority, original prefixed, marked "C", appointing Captain V________W. Z__________, U. S. Navy, a member of the court. A copy of the amendatory order was given to the party.

The party stated that he did not object to the new member or to any other member.

New member sworn.

The new member of the court was duly sworn and was afforded an opportunity to examine the record of proceedings of the court as far as it had progressed.

Note: If deemed advisable, the court will be recessed or adjourned for this purpose.

Witnesses separated.

No witnesses not otherwise connected with the inquiry were present.

Commander______________, U. S. Navy, took the stand as a witness, was duly sworn, informed of the subject matter of the inquiry, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A. ______________________________.

Witness introduces documentary evidence.

Q. Are you the custodian of the official log of USS______________(____)? If so, produce it.
A. I am, here it is.

Exhibits.

Note: Introducing documentary evidence or other material things, the following procedure should be followed by counsel:

Counsel: Request that the reporter mark this exhibit.

Note: The reporter is responsible for keeping a list of exhibits marked and also as finally accepted into evidence. The reporter will mark on the exhibit (or tag affixed thereto) the appropriate number and state:

Reporter: This will be Exhibit 1.

The log (Exhibit 1) was submitted to the party and to the court, and was offered in evidence by counsel for the court for the purpose of reading into the record such extracts therefrom as pertained to the explosion which occurred in USS_______________ (______) on___February 19___.

There being no objection, it was received in evidence.

Q. Refer to the log and read such portions thereof as pertain to__________________.

The witness read from the said log extracts, copy appended, marked "Exhibit 1."

Neither the counsel for the court, the court, nor the party desired further to examine this witness. The witness was duly warned concerning his testimony and withdrew from the courtroom.

Examination of a witness called by counsel for the court.

P________S. L__________, fireman, U. S. Navy, was called as a witness for the court, was duly sworn, informed of the subject matter of the inquiry and examined as follows:

Note: To the extent feasible, the procedures for preparing verbatim records of courts-martial shall be followed in courts of inquiry. All questions and answers (except statements or extracts from documents subsequently admitted as exhibits) as well as all objections, arguments and discussions thereto and rulings thereon shall be recorded verbatim. In all other instances entries may be summarized as outlined below unless verbatim proceedings are required for clarity.

Note: The examination of witnesses shall be captioned as below. Whenever possible, the side interrogating a witness shall be given the opportunity to complete such interrogation of that witness before further questions are propounded by anyone else.

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. ______________.
Q. ______________?
A. ______________.

CROSS EXAMINATION

Questions by counsel for CDR__________________, party:

Q. ______________?
A. ______________.

REDIRECT EXAMINATION

Questions by counsel for the court:

Q. ______________?
A. ______________.

RECROSS EXAMINATION

Questions by counsel for CDR____________________, party:

Q. ______________?
A. ______________.

EXAMINATION BY THE COURT

Questions by a court member (president/CAPT__________):

Q. ______________?
A. ______________.

Neither counsel for the court, the court, nor the party desired to examine this witness further.

The president of the court informed the witness that he was privileged to make any further statement covering anything related to the subject matter of the inquiry that he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement:

Witness:______________________________.

Note: If a witness brings up any new matter, each counsel will be afforded the opportunity of further examination before the witness is excused.

Warning the witness. (See section 0420)

Note: A witness who by assignment or otherwise is subject to naval authority is cautioned in the following tenor: "You are instructed not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You will not allow any witness in this case to talk to you about the testimony he has given or which he intends to give. If anyone, other than counsel or the parties thereto, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel originally calling you as a witness."

Note: A witness who is not subject to naval authority by assignment or otherwise is cautioned in the following tenor: "You are requested not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You should not allow any witness in this case to talk to you about the testimony he has given or which he intends to give. If anyone, other than counsel or the parties, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel originally calling you as a witness. Your cooperation is requested so that the evidence to be received is not influenced by any discussion of that nature."

The witness was duly cautioned concerning his testimony and withdrew from the courtroom.

At this stage of the proceedings it appeared to the court that the conduct of Lieutenant D____________F____________, U. S. Navy, was subject to inquiry, and that he should properly be designated a party to the inquiry. Accordingly, the president of the court instructed counsel for the court to summon Lieutenant F___________to appear.

Time of session.

The court (adjourned) (recessed) at________, ____February 19____.

The court (closed) (opened) at_______, ____February 19____.

All persons connected with the inquiry who were present when the court (adjourned) (recessed) are again present in court (except____________).

J__________A. H__________, chief yeoman, U. S. Navy, was introduced as reporter and was duly sworn.

No witnesses not otherwise connected with the inquiry were present.

Designation of a party.

Lieutenant D____________F____________, U. S. Navy, entered. The president of the court informed him of its conclusion that his conduct appeared to be subject to inquiry and the reasons therefor, and advised him that he was a party to the inquiry. (See NOTE first day as to informing party of his rights.)

Lieutenant F____________requested and was granted a delay in the proceedings until he could obtain counsel.

Adjournment.

The court adjourned at__________, ____February 19____.

-THIRD DAY-

On board
USS____________(____)
U. S. Naval Base
Norfolk, Virginia
Friday, ____Feb 19____

The court met at_____.

All persons connected with the court who were present when the court adjourned were again present in court.

Lieutenant F____________introduced Captain B_________O. J__________, U. S. Marine Corps (qualified in accordance with article 27(b) of the Uniform Code of Military Justice), as his counsel. Captain J__________took seat as such.

According rights to new party.

Lieutenant F___________examined the appointing order and modification(s) and stated that he did not object to any member of the court.

Note: An opportunity to examine the record of proceedings thus far conducted will be afforded Lieutenant F____________ and his counsel. If deemed advisable the court will be recessed (or adjourn) for this purpose.

Lieutenant F___________ stated that he did not desire to recall any of the previous witnesses for further examination.

Note: If further examination of any of the witnesses is requested by a newly named party, such witnesses will be recalled, if practicable.

No witnesses not otherwise connected with the inquiry were present.

View by the court.

The president announced that the court would adjourn to the scene of the explosion in USS_______________(_____).

The court adjourned at__________,___February 19___.

The court met at__________,____February 19___, in compartment A-106 USS__________ (_____) to inspect the damaged area.

After completing inspection of the scene of the explosion, all personnel present returned to the regular place of meeting where the court was reassembled.

The court opened at_________,____February 19___.

All the members, counsel for the court, the parties and their respective counsel and the reporter were present.

No witnesses not otherwise connected with the inquiry were present.

Person requests designation as a party.

Ensign J_______D_________, U. S. Navy, entered, informed the court that he had a direct interest in the subject matter of the inquiry and requested that he be designated a party and be accorded the rights of a party.

Ensign D__________ was directed to state the nature of his interest and replied as follows (Report the reply verbatim):

* * * * * * *

Designation as party and according of rights.

The court, having decided that Ensign D___________ had a direct interest in the subject of the inquiry, he was designated a party. (See Note first day as to informing party of his rights).

Ensign D___________ stated: "I waive my right to be represented by counsel and to examine the record of proceedings thus far conducted." He read the appointing order and modification(s) and stated that he did not object to any member of the court; or

The court recessed at__________,___February 19___, to provide Ensign D__________ with an opportunity to examine all the evidence of record.

The court opened at_________,___February 19___.

All persons connected with the inquiry who were present when the inquiry recessed were again present in court.

No witnesses not otherwise connected with the inquiry were present.

Ensign D_____________stated: "I have examined all the evidence of record and do not desire to recall any of the previous witnesses for further cross-examination."

Party called as a witness.

Lieutenant F________________, U. S. Navy, a party to the inquiry (but not formally charged with an offense), was called as a witness by the court and duly sworn. He was informed by the court that he was suspected of an offense, to wit:* * * * * *, was advised of his right not to testify or make any statement regarding the offense of which he was suspected, was informed that any statement or testimony made by him could be used as evidence against him in any subsequent trial, and was reminded of his rights as a party (and as a person injured in the events under inquiry).

Lieutenant F________________stated: "I understand my rights."

DIRECT EXAMINATION

Questions by counsel for the court:

Q. ________________?
A. ________________.
Q. ________________?

Objection by witness.

The witness declined to answer the question on the ground that it concerned the offense of which he was suspected and might incriminate him.

The counsel for the court replied. (This reply is to be recorded verbatim)

The president announced that, subject to objection by any member of the court, the witness' objection was overruled since the question was directed toward the same matter as the prior question which he had answered and the witness had waived his right to decline to answer that question.

The witness was directed to answer the question.

A. ________________.
Q. ________________?
A. ________________.

Commander O_______________, party, moved to strike out this answer on the ground that it was an opinion of the witness.

The counsel for the court replied. (This reply is to be recorded verbatim)

The president announced that, subject to objection by any member of the court, the motion of the party was granted, and the answer would be stricken.

Court overrules president's ruling.

A member objected to the ruling of the president.

The court closed at_______________,_____February 19___.

The court opened at_______________,_____February 19___.

All persons connected with the inquiry who were present when the inquiry closed were again present in court.

The president announced that his previous ruling was withdrawn and that the motion to strike was denied.

CROSS EXAMINATION

Questions by a party, Commander O_______________:

Q. _______________?
A. _______________.

Objection by witness to question.

Q. _______________?

The witness declined to answer the question on the ground that it concerned a separate offense of which he was suspected and concerning which he had not testified.

Counsel for the court replied. (This reply is to be recorded verbatim.)

Commander O_____________replied. (This reply is to be recorded verbatim.)

The president announced that, subject to objection by any member of the court, the witness' claim of privilege was sustained.

Questions by Ensign D_______________, party:

Q. _______________?
A. _______________.

Party examines himself.

Questions by Lieutenant F_______________, party:

Q. _______________?
A. _______________.

REDIRECT EXAMINATION

Questions by counsel for the court:

Q. _______________?
A. _______________.

EXAMINATION BY THE COURT

Questions by the (president) (CAPT_______________):

Q. _______________?
A. _______________.

Neither the counsel for the court, the court, nor the parties desired further examination of this witness. He resumed his seat as a party.

Counsel for the court has no further evidence to present.

Counsel for the court stated that he had completed the presentation of his evidence.

Parties informed of right to call witnesses.

The president of the court informed the parties that they could now call witnesses and present any evidence in their own behalf.

Examination of witness called by party.

O______________P. J____________, machinist's mate, third class, U. S. Navy, was called as a witness by Commander O____________, party, was duly sworn, informed of the subject matter of the inquiry, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. ______________.

Questions by counsel for Commander O____________, party:

Q. ______________?
A. ______________.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned concerning his testimony and withdrew from the courtroom.

Party calls self as witness.

Ensign D______________, a party, called himself as a witness. He was informed by the court that he was suspected of an offense, to wit: * * * *, was advised of his right not to testify or make any statement regarding the offense of which he was suspected, was informed that any testimony or statement made by him might be used as evidence against him in any subsequent trial, and was reminded of his rights as a party.

Ensign D______________stated that he understood his rights and that he chose to testify relative to the offense of which he was suspected.

(Ensign D______________, a party, stated that he withdrew his request to testify.)

Ensign D______________, a party, took the stand to testify in his own behalf, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A. ______________.

Q. Are you a party to this proceeding?
A. I am.

Questions by Ensign D_____________, party:

Q. _____________?
A. _____________.

Questions by counsel for Commander O_____________, party:

Q. _____________?
A. _____________.

CROSS EXAMINATION

Questions by counsel for the court:

Q. _____________?
A. _____________.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further. He resumed his seat as a party.

Parties rest.

None of the parties desired to present additional evidence.

Witness for the court.

The court announced that it desired further testimony and directed that R___________O. J_____________, chief gunner's mate, U.S. Navy, be called as a witness for the court.

R_____________O. J_____________, chief gunner's mate, U.S. Navy, was called as a witness for the court, was duly sworn, informed of the subject matter of the inquiry, and was examined as follows:

EXAMINATION BY THE COURT

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. _____________.

Questions by the (president) (CAPT_____________):

Q. _____________?
A. _____________.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry that he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned concerning his testimony and withdrew from the courtroom.

Statements of Parties.

Commander O_____________ and Ensign D_____________, parties, each submitted a signed written statement, which statements were read and are appended as exhibits (numbered _____ and _____, respectively).

Lieutenant F_____________, party, made an oral statement as follows:

* * * * * * * *

Arguments.

Counsel for the court read his written opening argument, which is appended, marked _____.

Note: Counsel may waive opening argument. He may also make an oral argument in lieu of a written one, in which event it will be recorded in the record as given.

Commander O_____________, party, read a written argument, which is appended, marked _____________.

Lieutenant F_____________, party, made the following oral argument:

* * * * * *

Note: Argument may be made by either the party or his counsel.

Ensign D_____________, party, desired to make no argument.

The counsel for the court made the following closing argument:_____________.

Inquiry completed.

President: Counsel for the court and the party (parties) having no further evidence or argument to present to this court of inquiry, the court is now adjourned to consider all the evidence and to submit to the convening authority its findings of fact, opinions, and recommendations. The court will be closed.

The court closed at__________, _____ February 19___.

Findings of fact, opinions, and recommendations.

The court, after inquiring into all the facts and circumstances connected with the incident which occasioned the inquiry, and having considered the evidence, finds as follows [and submits the following opinions and recommendations]:

FINDINGS OF FACT (See section 0430)

1. That a violent explosion occurred at 0939, _____ February 19___, in USS_____________ (______).

2. ****************

OPINIONS (See section 0431)

1. That the cause of the explosion was ***************.

2. That Commander O______________was derelict in his duties in that he***************.

3. That the injuries to ************ which were caused by the explosion occurred in the line of duty and were not the result of their misconduct.

4. ****************

RECOMMENDATIONS (See section 0432)

1. That Commander M_____________N. O_____________, U. S. Navy, be brought to trial by general court-martial on the charge of violation of Article ******, Uniform Code of Military Justice. The appropriate charge sheet, signed by the president of this court as accuser, is forwarded herewith.

2. That Lieutenant D_____________ F_____________, U. S. Navy, be addressed a letter of reprimand for his failure to **************. A draft of such a letter is forwarded herewith.

3. That, in order to prevent a recurrence of this type of explosion, the following action be taken: **************.

J______________B. T______________
Rear Admiral, U. S. Navy
President

D______________E. F______________
Captain, U. S. Navy
Member

Note: If there is no minority report, member signs as shown above. If there is a minority report, the member who disagrees with the majority does not sign. Instead he submits a minority report and signs as follows:

Minority report. I concur with the majority report except as follows:

I disagree with the court's finding number 3 for the reason that _______________.

I disagree with the court's opinion number 2 for the reason that _______________.

I disagree with the court's recommendation number 1 for the reason that ________.

The following additional (findings of fact) (opinions) (and recommendations) are submitted:_____________________________. (See section 0433)

S______________T. U______________
Captain, U. S. Navy
Member

Final entry. (See section 0435b)

J____________ B. T____________
Rear Admiral, U. S. Navy
President

J____________ K. L____________
Commander, JAGC, U. S. Navy
Counsel for the court

Note: If either the president or the counsel for the court can not authenticate the record, a member shall sign in lieu thereof. (See section 0435b). Members authenticating the record sign as follows:

____
Captain, U. S. Navy, a member in lieu of
the (president)(counsel) because of his
(death)(disability)(absence)

Documents appended.

Note: Here all exhibits received in evidence are appended in the order in which they were marked during the inquiry. See section 0424 with respect to substituting a description, photograph, or copy of any exhibit. Section 0432 requires that, when a letter of censure is recommended, a draft of the letter be prepared and forwarded with the record. See Appendix 1-a, 1-b(1), and 1-c(1).

APPENDIX SECTION – 6

READEX
FICHE

INFORMAL ONE OFFICER INVESTIGATION

a. Appointing order 1/ (See section 0602a)

(File information)
_____Feb 19____

From: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton, California

To: Captain X_______Y. Z________, 000-00-0000/0302 USMC 2/

Subj: Investigation to inquire into the circumstances connected with _______ which occurred at _________on_________February 19___

Ref: (a) JAG Manual

1. You are appointed to conduct an informal investigation, in accordance with chapter VI of reference (a), as soon hereafter as practicable, for the purpose of inquiring into all the circumstances connected with__________which occurred at___________on _____February 19___.

2. You will conduct a thorough investigation into all the circumstances connected with _____________ and report your findings of fact, opinions 3/ and recommendations 3/ as to the cause of ____________, the resulting damage, the injuries to members of the naval service and their line of duty and misconduct status, the circumstances attending the death of members of the naval service, and responsibility for _________ including any recommended administrative or disciplinary action.

3. In particular, your attention should be directed to sections 0306, 0606d(3), 0308, and Appendix A-3-a of reference (a) and Article 31, UCMJ.

4. By copy of this appointing order, Commanding Officer, Headquarters Company is directed to furnish the necessary reporters and clerical assistance for recording and transcribing the testimony of witnesses and assisting you in preparing the report of the results of your investigation.

/s/ R___________C. K___________

Copy to:
[CG, MCB, CamPen, Calif]
[CO, HQCo, HQBn, MCB, CamPen, Calif] (Signed copy)

1/ A written appointing order is not necessary for an informal one officer investigation; however, one may be issued at the discretion of the convening authority. Such an order may facilitate the conduct of interrogation of witnesses outside the naval service if the investigating officer has it available for immediate production to anyone who questions his authority or evinces reluctance to talk to him.

2/ The investigating officer is not required to be a commissioned officer. See 0601.

3/ See 0608d-e.

b. Informal investigative report (See section 0609)

From: Captain X____________ Y. Z____________, 000-00-0000/0302 USMC

To: Commanding Officer, Headquarters Battalion, Marine Corps Base,
Camp Pendleton, California

Subj: (Same as subject of appointing order)

Encl: (1) Appointing order and modifications thereto (if any were issued)
(2) [Summary of (or verbatim) sworn (or unsworn) testimony of ____________ ____________, (a witness)]
(3) [Summary of (or verbatim) sworn (or unsworn) testimony of ____________ ____________, (a witness)]
(4) Statement of ____________, signed by witness
(5) Description of ____________ (knife found at scene of the accident)
(6) Photograph of ____________ depicting ____________

Note: The testimony of each witness should be a separate enclosure to the investigative report. Enclosures containing testimony or statements of witnesses should precede enclosures in the form of other documents, descriptions of real evidence, photographs, et cetera. See 0608f.

Preliminary Statement

1. Paragraph 1 of the investigative report shall contain information in the form of a "preliminary statement". Its length may make it necessary to continue on into one or more additional paragraphs. See section 0608. The purpose of the preliminary statement is to inform the convening and reviewing authorities that the requirements as to procurement of evidence and any directives of the convening authority have been met. Where applicable, the investigating officer should set forth the name and organization of the judge advocate consulted. After setting forth the nature of the investigation, he will set forth the difficulties encountered in the investigation, if any; limited participation in the investigation by a member; or any other information necessary for a complete understanding of the case. A report of the investigating officer's itinerary is not necessary. Notwithstanding that it may be set forth in the preliminary statement, the findings of fact shall include all essential facts developed by the investigation.

Findings of Fact

1. ____________________
2. ____________________
3. ____________________

Note: See section 0608c. The findings of fact constitute the investigating officer's description of the details of the events as derived from his evaluation of the evidence. The findings must be as specific as possible as to time, places, persons, and events. Each fact may be made a separate finding, or facts may be grouped into a narrative. It is for the investigating officer to determine the most effective presentation for a particular case. Each fact set forth must be supported by either the testimony of a witness, statement of the investigating officer, or documentary or real evidence appended to the investigative report as an enclosure thereto.

Opinions

1. ____________________
2. ____________________
3. ____________________

Note: See section 0608d. An opinion is a logical inference or a conclusion drawn from the prior factual description of the events. For guidance as to the opinions normally required in specific situations, see chapters VIII and IX. Each opinion set forth must be supported by the findings of fact. Determination of line of duty and misconduct is properly stated as an opinion.

Recommendations

1. ____________________
2. ____________________
3. ____________________

Note: See section 0608e. If the investigating officer recommends trial by court-martial, a charge sheet, signed and sworn to by the investigating officer shall be prepared and submitted to the convening authority with the investigative report. See paragraph 29, MCM. If a punitive letter of reprimand or admonition or a nonpunitive letter is recommended, a draft of the recommended letter shall be prepared and forwarded with the investigative report.

(Signature of investigating officer)

APPENDIX SECTION – 8

a.

Article 17-18 of the Manual of the Medical Department: (See section 0810e)

"17-18. Post Mortem Examinations and Autopsies

"(1) When a member of the uniformed services on active duty or active duty for training dies aboard a naval ship, at a naval station, in a naval aircraft, or outside the jurisdiction of local civil authorities of the United States, and (a) death occurs under unnatural or suspicious circumstances, (b) there is reason to believe that the cause of death might constitute a menace to the public health, (c) the cause of death is unknown, or (d) death occurs while serving as an aircrew member in a military aircraft, the medical officer will recommend to the commanding officer having custody of the remains that a post mortem examination be authorized to determine the cause of death. Under these circumstances the commanding officer may authorize such a post mortem examination.

"(2) Except as set forth in subarticle 17-18(1), autopsies may be performed only with the consent of the person or persons having the right of custody of the remains for burial or upon request of the local coroner or medical examiner. When authorization for a post mortem examination is required such authorization shall be obtained on Standard Form 523 (Authorization for Post Mortem Examination).

"(3) Whenever an autopsy is performed it shall be done promptly and with a minimum of disfiguration. The expeditious release of remains for preparation, encasement, and shipment to the next of kin is of utmost importance. All autopsies shall be reported on Standard Form 503 (Autopsy Protocol) and a copy thereof shall be attached to the original of the NAVMED-N which is forwarded to BUMED."

d. Letter report of death. (See section 0810f.)

From: Commanding Officer, 31st Mobile Construction Battalion
To: Judge Advocate General of the Navy
Via: Commander, Construction Battalions, U. S. Pacific Fleet

Subj: BU3 Crain L. OPERATER, USN, 123 45 6789, death

Ref: (a) CNO ltr Ser 0048P621f of 8 July 1969

1. This command is engaged in performing a classified project NIGHTENGALE (U) pursuant to reference (a).

2. At about 1000 on Friday, 24 April 1970, while clearing a jungle area at coordinates 2761-3215 on Small Scale Map R-27, enclosure (5) to reference (a), Petty Officer OPERATER was directing two other men on a bulldozer in the uprooting of trees and brush. OPERATER and the other men were frequently slapping exposed portions of their bodies in response to bites of insects which abound in this area. OPERATER was observed by the two other men (named and identified opposite numbers 43 and 57 in enclosure (10) to reference (a)) to sit down on a felled tree trunk at about 1005, holding his head in his hands. OPERATER did not arise, and one of the men (number 43) jumped from the bulldozer and walked toward OPERATER. As he reached a point about ten feet from where OPERATER was sitting, OPERATER was observed to fall forward on the ground, face-down, and to start twitching his arms and legs convulsively. He gave no indication of being conscious, and did not respond to questions by either of the other men. The two men lifted OPERATER to the bulldozer and brought him back to the base camp, ten miles away. He was observed to have a needle-like thorn, about four inches in length, projecting from the back of his neck, left side, just above the collar line. This number 43 withdrew and wrapped in a piece of tissue paper. Twitching of legs and arms continued en route the base camp, but seemed to be spaced at longer intervals. The last such episode was observed at about 1115, just before reaching the camp. Upon reaching the camp, a hospital corpsman first class (number 12 on enclosure (10)) was summoned from a nearby area, arriving at about 1125. No vital signs were observed and OPERATER was pronounced dead as of 1130.

3. Pursuant to message instructions from OpNav (Op621f), the body of OPERATER, along with the thorn removed from his neck, was transported to Andrews Air Force Base, Washington, D. C., to be taken to Walter Reed Army Hospital, for autopsy and toxicological examination by the Armed Forces Institute of Pathology.

N. J. Near
N. J. NEAR
Captain, CEC, USN

(See section 0810f)

FIRST ENDORSEMENT on 31st MCB ltr 25 April 1970

From: Commander, Construction Battalions, U. S. Pacific Fleet
To: Judge Advocate General of the Navy

Subj: BU3 Crain L. OPERATER, USN, 123 45 6789, death of, on
24 April 1970, at 1130

Ref: (b) Director AFIP msg 031332Z May 70 to CHNAVPERS

1. Forwarded.

2. Reference (b) indicates the cause of death of OPERATER as a central nervous system poison, injected by the thorn removed from his neck. It is improbable that either of his co-workers was in any way involved in bringing about his death.

3. Until such time as information pertaining to Operation NIGHTENGALE may be generally published, it is recommended that OPERATER's death be stated simply as having been due to accidental injuries received in the course of a jungle clearing mission.

H. E. Beegle
H. E. BEEGLE
RADM, CEC, USN

e. EXAMPLE OF INJURY REPORT USING NAVJAG 5800/15 (See section 0814c)

NAVJAG 5800/15
(REV. 3-77)
S/N 0105-LF-105-8075

INJURY REPORT

THIS FORM IS TO BE USED ONLY FOR NOT MISCONDUCT AND IN LINE OF DUTY DETERMINATIONS AND IN ACCORDANCE WITH CHAPTER VIII, JAG MANUAL. SUBMIT TYPEWRITTEN ORIGINAL TO THE JUDGE ADVOCATE GENERAL VIA OFFICER EXERCISING GCM AUTHORITY.

RCS JAG 5800-19

FROM: (NAME OF REPORTING COMMAND)

Naval Station, Norfolk, Virginia 23511

TO:

Judge Advocate General, Navy Department, Washington, DC 20370

VIA: (OFFICER EXERCISING GCM AUTHORITY)

Commandant, Fifth Naval District, Norfolk, Virginia 23511

1. NAME OF INJURED SERVICE MEMBER	2. SSN	3. GRADE	4. SERVICE
Water Tight DOOR	890-12-3456	BMSN	USN

5. DATE AND PLACE OF INCIDENT CAUSING INJURY

31 May 1976, Hobby Shop, BLDG 114, NavBas NorVa

PART I – TO BE COMPLETED BY MEDICAL OFFICER

	DATE	TIME	PLACE
6. FIRST SEEN BY MEDICAL OFFICER	31 May 76	1400	Naval Hospital, Portsmouth, VA

7. DIAGNOSIS

Half of Distal Phalange, Middle Finger, right hand, cleanly severed. No secondary infection apparent.

8. PROGNOSIS

Finger cannot be surgically restored; otherwise good

CONDITION OF INDIVIDUAL AT TIME OF EXAMINATION

9. UNDER INFLUENCE OF

☐ ALCOHOL ☐ BARBITURATES ☐ NARCOTICS
☐ OTHER (SPECIFY)

10. ☒ NOT UNDER INFLUENCE OF ANY LISTED IN ITEM 9

11. ☐ UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION

12. BASIS FOR OPINION IN 9 OR 10 ABOVE

	ODOR OF ALCOHOL		TRUCULENT		UNCOORDINATED	
	STAGGERING		UNSTEADY		HICCOUGHING	
	SEMICONSCIOUS		INCOHERENT	X	NORMAL	

CLINICAL TESTING WITH INTOXICATION LEVEL OF: None done

13. ALLEGED CIRCUMSTANCES INITIALLY REPORTED AND SOURCE OF INFORMATION

Part of DOOR's finger was cut off in the Naval Base Hobby Shop. Reported by LN2 Hermetically Sealed JAMB, USN, 345-67-8911, who brought DOOR to hospital.

14. IT IS POSSIBLE THAT THE FOLLOWING DISABILITY MAY RESULT

☒ PERMANENT PARTIAL ☐ PERMANENT TOTAL
☐ NONE (NOTE)

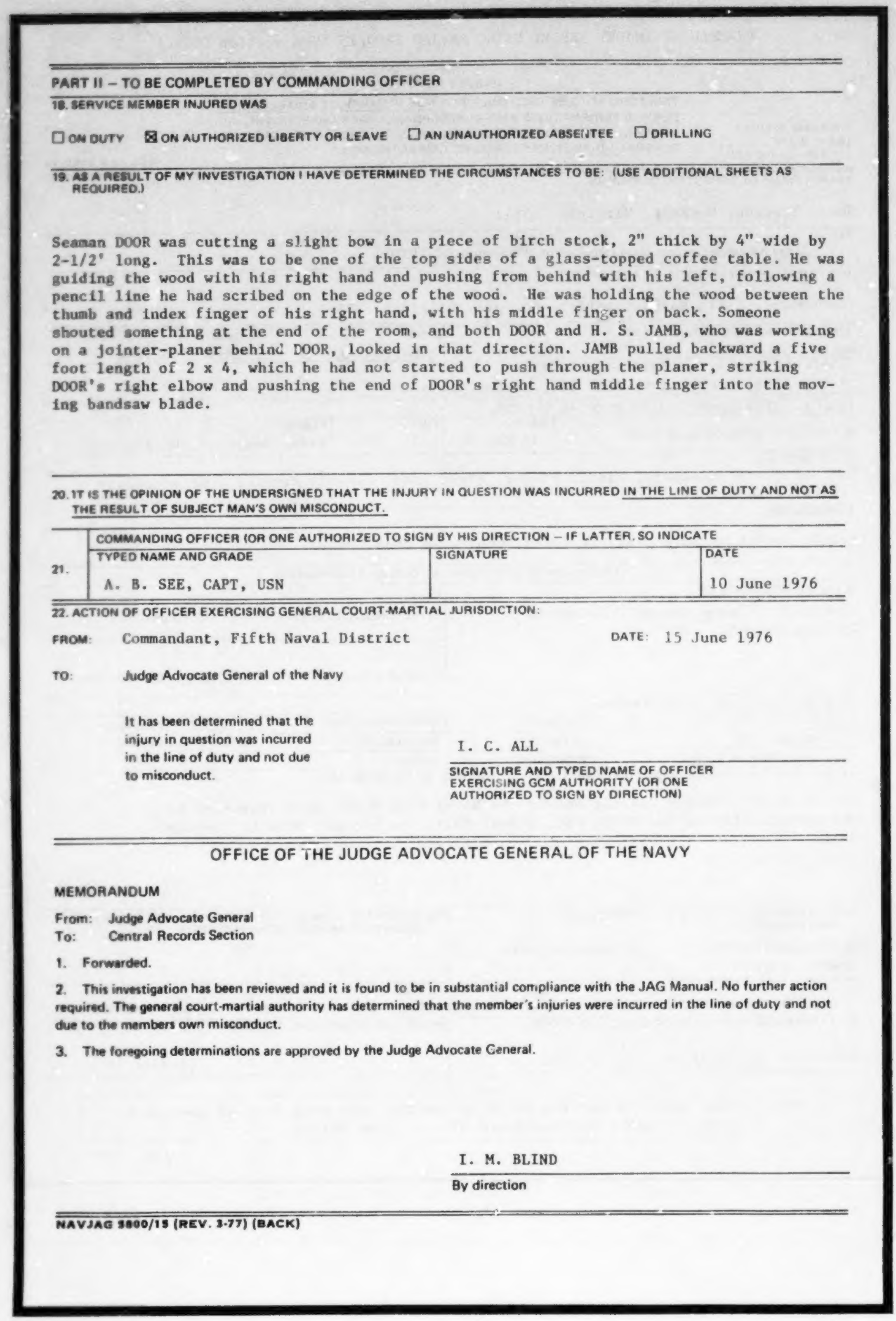
15. ESTIMATED LOSS OF TIME FROM DUTY AS A RESULT OF INJURY OR DATE OF RETURN TO DUTY

75 days

16. BASED ON THE ABOVE, THE FOLLOWING FINDING IS RECOMMENDED: IN LINE OF DUTY. NOT DUE TO OWN MISCONDUCT.

17. TYPED NAME AND GRADE OF MEDICAL OFFICER	SIGNATURE OF MEDICAL OFFICER	DATE
Harvey G. AESCULAPIUS, LT, MC, USN		3 June 1976

NOTE: None entry in Section 14 to be checked only when form is used as a summary report in accordance with section 0814b.



PART II – TO BE COMPLETED BY COMMANDING OFFICER

18. SERVICE MEMBER INJURED WAS

☐ ON DUTY ☒ ON AUTHORIZED LIBERTY OR LEAVE ☐ AN UNAUTHORIZED ABSENTEE ☐ DRILLING

19. AS A RESULT OF MY INVESTIGATION I HAVE DETERMINED THE CIRCUMSTANCES TO BE: (USE ADDITIONAL SHEETS AS REQUIRED.)

Seaman DOOR was cutting a slight bow in a piece of birch stock, 2" thick by 4" wide by 2-1/2' long. This was to be one of the top sides of a glass-topped coffee table. He was guiding the wood with his right hand and pushing from behind with his left, following a pencil line he had scribed on the edge of the wood. He was holding the wood between the thumb and index finger of his right hand, with his middle finger on back. Someone shouted something at the end of the room, and both DOOR and H. S. JAMB, who was working on a jointer-planer behind DOOR, looked in that direction. JAMB pulled backward a five foot length of 2 x 4, which he had not started to push through the planer, striking DOOR's right elbow and pushing the end of DOOR's right hand middle finger into the moving bandsaw blade.

20. IT IS THE OPINION OF THE UNDERSIGNED THAT THE INJURY IN QUESTION WAS INCURRED IN THE LINE OF DUTY AND NOT AS THE RESULT OF SUBJECT MAN'S OWN MISCONDUCT.

21. COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION – IF LATTER, SO INDICATE

TYPED NAME AND GRADE	SIGNATURE	DATE
A. B. SEE, CAPT, USN		10 June 1976

22. ACTION OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION:

FROM: Commandant, Fifth Naval District DATE: 15 June 1976

TO: Judge Advocate General of the Navy

It has been determined that the injury in question was incurred in the line of duty and not due to misconduct.

I. C. ALL

SIGNATURE AND TYPED NAME OF OFFICER EXERCISING GCM AUTHORITY (OR ONE AUTHORIZED TO SIGN BY DIRECTION)

OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

MEMORANDUM

From: Judge Advocate General
To: Central Records Section

1. Forwarded.

2. This investigation has been reviewed and it is found to be in substantial compliance with the JAG Manual. No further action required. The general court-martial authority has determined that the member's injuries were incurred in the line of duty and not due to the members own misconduct.

3. The foregoing determinations are approved by the Judge Advocate General.

I. M. BLIND

By direction

NAVJAG 5800/15 (REV. 3-77) (BACK)

f. (See section 0814d)

EXAMPLE OF INJURY REPORT USING FORM NAVMC 10767

ACCIDENT AND INJURY REPORT (5100)
NAVMC 10767 (5-68)

REPORT CONTROL SYMBOL - MC 5100-02
Do not write in the boxes within the numbered blocks.

SAMPLE

CHECK ONE: ☒ MILITARY ☐ CIVILIAN

FOR HQMC USE ONLY

1. INJURED PERSON *(Last Name, First, Middle Initial)*: PELL, Joseph W.
2. SERVICE/BADGE NO.: 750-35-4599
3. AGE: 20
4. SEX: M
5. YRS. EXPER. *(Civilian only)*:
6. PAY GRADE: E-4
7. MOS/OCCUPATION/TRADE: 1141 Electrician
8. CATEGORY *(Military only)*: Enlisted, Regular Active
9. SPECIAL QUALIFICATION *(Military only)*: N/A
10. JOB ASSIGNMENT *(Military only)*: Electrical Maintenance
11. REPORTING ACTIVITY/UNIT: 3d FSR, Camp FOSTER
12. DUTY STATION *(Military only)*: Same as 11

13. PROPERTY, EQUIPMENT DAMAGE AND TOTAL COST

A. TYPE	B. OWNERSHIP	C. TOTAL COST
Shorted circuits in Data Processing Machine	USMC	$150.00

14. DATE AND TIME OF ACCIDENT *(Hour, Day, Month, Year)* HR DAY MO YR: 0915, 26 Feb 1968
15. WEATHER/NATURAL DISASTER: N/A
16. DEGREE OF INJURY: Disabling Inj.
17. DAYS LOST: 18
18. DUTY STATUS *(Military only)*: Performing MOS Duties
19. PLACE OF OCCURRENCE *(Military only)*: Okinawa
20. DESCRIPTION OF ACCIDENT *(Describe circumstances and events leading to and associated with accident in sufficient detail that reviewing authorities may gain a complete understanding of cause and effect relationships. If more space is needed use Block 36.)*

An electrician was oiling an electric wall fan in the data processing room. He stood on a chair which collapsed allowing him to fall to the deck. His arm was broken when he tried to cushion the fall. The chair slid into a machine resulting in shorted circuits.

21. NATURE OF INJURY: Fracture
22. BODY PART: Left Forearm
23. SOURCE OF INJURY: Chair
24. ACCIDENT TYPE: Fall to different level
25. HAZARDOUS CONDITION: Hazardous method - standing on a chair
26. AGENCY OF ACCIDENT: Chair
27. AGENCY PART: N/A
28. UNSAFE ACT: Use of improper equipment
29. UNSAFE PERSONAL FACTOR: N/A
30. OTHER FORMS/DOCUMENTS SUBMITTED *(Civilian only)*: ☒ NONE ☐ CA1 ☐ CA2 ☐ OTHER *(Specify)*
31. RECOMMENDED CORRECTIVE ACTION

Electricians should be provided with a portable step ladder for use when oiling wall fans above shoulder high.

32. SIGNATURE *(Preparing Official)*: R.J. Trai R J Train
33. TITLE, GRADE/RATE: Maintenance Officer 1st Lt. USMC
34. DATE: 28 Feb 1968

g. Sample letter transmitting NAVMC 10767. (See section 0814c.)

From: Commanding General, Third Marine Division, FMF, Pacific
To: Judge Advocate General of the Navy

Subj: Injuries to CPL Joseph W. PELL, USMC, 750-35-4599, report of accidental injuries, 0915, 20 February 1968

Ref: (a) Section 0814c, Manual of the Judge Advocate General

Encl: (1) Duplicate original Accident and Injury Report (5100) NAVMC 10969, submitted by 3d FSR, Camp Foster

1. Enclosure (1) has been reviewed and is forwarded in accordance with reference (a).

2. PELL sustained a simple fracture of the distal portion of the left radius as a result of this incident. It is the opinion of the medical officer, Harvey G. Aesculcapus, LT, MC, USN, 542438, that subject member may have a permanent partial disability as a result of this injury. He and the commanding officer concur that the injury was sustained in line of duty and not as a result of the member's own misconduct.

S. O. Tripoli
S. O. TRIPOLI
By direction

j. Sample of recommendation by examining judge advocate

See section 0814e

From: ______________________________, JAGC, USN

To: Commanding Officer, ______________________________

Subj: Report of injury to ____________________ in ____________

1. I have examined subject report.

2. (Comment.)

3. A JAG Manual investigation (is) (is not) recommended.

____

____________________, JAGC, USN

Agreed English/French Texts

NATO STANDARDIZATION AGREEMENT
(STANAG)

COMBINED INVESTIGATION OF MARITIME INCIDENTS

Annex A: Conduct of a Combined Board of Inquiry

Related Documents: STANAG 3531 FS Investigation of Aircraft/Missile Accidents/Incidents

OBJECT

1. The aim of this agreement is to lay down procedures which may be followed in the event of maritime incidents involving units or personnel of two or more NATO nations.

AGREEMENT

2. Participating nations agree to three alternative procedures which should be used for the conduct of inquiries into such maritime incidents. The purpose of these inquiries would be to ascertain the facts, to reach conclusions as to the direct and indirect causes of the event and, if needed, to make recommendations to prevent a recurrence.

3. Nations retain all their existing rights to conduct their own investigations in accordance with their own laws or regulations.

4. The alternatives are:

a. Procedure A. Combined Board of Inquiry.

b. Procedure B. A National Inquiry Attended by Witnesses and/or Observers from Other Nations.

c. Procedure C. Independent National Inquiries Co-ordinated by the Presidents of those Inquiries.

The Major NATO Commander or Major Subordinate Commander under whose command the units or personnel concerned were operating should recommend the procedure he deems most appropriate for each specific incident. Nations are free to accept the NATO commanders' recommendation or to choose an alternative procedure in consultation with each other. Where there is no common NATO commander, the procedures to be used should be determined and initiated as agreed between the nations concerned.

Procedure A -- Combined Board of Inquiry

5. A Combined Board of Inquiry will be convened by the appropriate Major NATO or Major NATO Subordinate Commander as agreed by the nations concerned. The convening authority will appoint officers to form the Combined Board, which shall be composed of a minimum of 3 officers, with each nation involved in the incident represented. The President of the Board is to be superior in rank and, if practicable, the other members are to be equal or superior in rank to any person who may be affected by the findings of the Board.

6. Combined Boards are to be held in private and the record of proceedings as well as the subsequent report shall be considered to be privileged to the fullest extent practicable. Information concerning the proceedings, testimony, findings, conclusions, and recommendations shall not be released publicly without the agreement of all nations involved.

7. The conduct of the inquiry is to be in accordance with Annex A to this STANAG.

8. The report of the Board of Inquiry is to be forwarded by the President to the convening authority, copies being sent direct to the Ministries of Defense of the nations involved. A verbatim transcript of all evidence and copies of documents accepted in evidence by the Board are to be included.

9. The costs will be met in accordance with established NATO procedures, i.e., administrative and transportation costs are the responsibility of the convening authority and per diem expenses are a national responsibility.

Procedure B - A National Inquiry Attended by Witnesses and/or From Other Nations

10. Boards of Inquiry will be convened by the appropriate national authorities, who will request the attendance of witnesses from other nations. Such witnesses may give evidence under the laws and procedures of the convening nation or if this is not acceptable to the nations involved, may give evidence under the rules for witnesses at a Combined Board (Annex A). Observers from the nations concerned may be present during the relevant parts of the inquiry.

11. Unless otherwise agreed, the evidence of each foreign witness, and any findings which affect him, are to be forwarded to the national concerned. Evidence and findings of concern to NATO shall be forwarded to the relevant NATO Commander by the national authorities.

12. The costs of attendance of foreign witnesses shall be met by the nation convening the inquiry.

Procedure C - Independent National Inquiries Co-ordinated by the Presidents of the Inquiries

13. Inquiries under this procedure consist of two phases. In the first phase, each National authority concerned appoints its own Board of Inquiry acting in accordance with national rules and regulations and hearing evidence only from its own nationals. During this phase the Presidents of the Boards of Inquiry shall exchange initial national reports of the incident. If they consider it necessary, the Presidents may meet in order to obtain or exchange any further information they deem appropriate to the establishment of the facts.

14. In the second phase, the reports drawn up by the national Boards of Inquiry are compared by a Combined Commission composed of the Presidents of the National Boards with any other members agreed by the nations concerned. The Combined Commission then prepares a summary showing where the reports agree and where they differ. The summary is sent to the Ministries of Defense of the nations involved, and if applicable, to the NATO authorities concerned.

15. The combined summary and any information exchanged between the Presidents of the National Boards of Inquiry are not to be released without consent of all the nations concerned.

IMPLEMENTATION OF THE AGREEMENT

16. This STANAG is considered to be implemented when nations and Major NATO commanders have issued the necessary orders/instructions putting the procedures detailed in this agreement into effect.

CONDUCT OF A COMBINED BOARD OF INQUIRY

Terms of Reference

1. The convening authority shall provide a Board of Inquiry with a convening order which shall contain full and specific instructions to:

a. The composition of the board.

b. The place and time at which the Board shall assemble, unless the President is directed to issue his own orders in this respect.

c. The investigation required.

d. The matters on which findings or recommendations are required.

e. The security classification of the matter to be investigated.

f. Responsibility for providing the necessary administrative and clerical support for the Board.

A draft Convening Signal is at Appendix 1.

Responsibilities of the Board

2. The Board shall ascertain the facts, reach conclusions as to the direct and indirect causes of the event and make recommendations to prevent a recurrence.

3. The Board may invite a person to:

a. attend as a witness, or

b. Make a statement in writing.

Persons will be advised of their rights as witnesses as set out in Paragraph 9 below.

4. A Board of Inquiry is to maintain a verbatim record of all the proceedings.

5. The Board may receive any evidence which they consider relevant whether or not it would be admissible in a civil or criminal court.

Procedures

6. Evidence will normally be received in French or English; however, interpreters will be made available when required.

7. Evidence before a Board of Inquiry shall not be taken on oath, unless the national procedures of a particular witness so require. A witness testifying on oath before a Board shall take the oath recognized by his belief or national practice.

8. Witnesses shall be cautioned that the evidence which they give is, like the report of the Board, privileged and they should not discuss it outside the confines of the Board.

Rights of Persons Who May be Affected

9. A witness or other person designated by the convening authority or the President as someone who may be affected by the findings of the Board shall be advised of and accorded the following rights:

a. To be given notice of the proceedings.

b. To be present during the proceedings, but not when the investigation is closed for deliberation.

c. To be represented by counsel or adviser.

d. To testify as a witness.

e. To introduce evidence.

f. To cross-examine witnesses.

g. To refuse to answer any question the answer to which would incriminate himself.

h. To make a written statement to be included in the records of proceedings.

i. To address the Board at the conclusion of presentation of evidence.

Custody of Evidence

10. The authority convening the Board is to issue orders for the preservation and custody of evidence, such as charts, logs, signal messages, etc. until they can be delivered to the Board.

APPENDIX 1 TO
ANNEX A TO
STANAG 1179
(Third Draft)

DRAFT CONVENING SIGNAL

From: (To be inserted)

To: (Ships and authorities concerned)

Info: (MODs of Countries concerned)
(Major NATO Commanders concerned)
(NATO Subordinate Commander concerned)

Classification: (To be inserted)

DIG: (To be allocated when appropriate)

Subject: Combined Board of Inquiry

Reference: A. STANAG 1179 (NOTAL)

1. A Combined Board of Inquiry comprising the following officers is to assemble on board (ship/place) at (date/time/zone) or as directed by the President:

a. (President)

b.

c.

et seq

2. The Board is to inquire into the circumstances attending the . . . (scope of inquiry). The classification is . . . .

3. The Board is to be conducted in accordance with STANAG 1179 Procedure ALPHA (and is to make recommendations to prevent a recurrence).

4. The following documents/exhibits are to be impounded and forwarded to the President. Supplementary instructions are to be issued by the President as necessary.

a.
b.
c.
et seq

5. Stenographer will be provided by . . . .

6. . . . copies of the Board's report are to be submitted.

APPENDIX SECTION – 12

SUGGESTED FORMAT FOR PILOTAGE AND TUG SERVICES CONTRACT

(See Section 1215)

It is understood and agreed that the furnishing of pilotage and/or tug services by the Department of the Navy for the vessel SS ________________ shall not be construed to give rise to a personal contract between the named individuals signing this agreement; and

it is further understood and agreed that the Department of the Navy in furnishing any pilotage and/or tug services shall have the benefit of all exemptions from and limitations of liability to which the owner of a vessel is entitled under the applicable statutes of the United States; and

it is further understood and agreed that when any pilot or a captain of any tug furnished to or engaged in the service of assisting a vessel making use or having available her own propelling power, goes on board such vessel, or any vessel, he becomes the borrowed servant of the vessel assisted and her owner or operator for all purposes and in every respect, including but not limited to the handling and navigation of such vessel and in respect to any orders given to any assisting tugs, his services while so on board being the work of the vessel assisted and not of the United States Navy and being subject to the exclusive supervision and control of the ships personnel; and

it is further understood and agreed that the assisted vessel and her owners will assume all liability for any loss or damage (including that suffered or caused by any assisting tug) resulting from or arising out of the negligence or fault of the pilot or assisting tug and that neither the United States Navy, nor any pilot, nor any tug shall be liable, directly or by way of indemnity or otherwise, for any such loss or damage; and

it is further understood and agreed that if any such assisted vessel is not owned by the person or company ordering the pilotage and/or tug services, that such person or company warrants its authority to bind the vessel and her owners to all provisions of the preceding paragraphs, and agrees to indemnify and hold harmless the Department of the Navy, its agents, servants, employees and any assisting tug or pilot from any claim and all damages and expenses that may be sustained or incurred in consequence of such person or company not having such authority.

____
(Signature)

____
(Title)

FOR ________________________________
(Name of ship)

BIBLIOGRAPHY

(See Section 1201)

For those interested in acquiring further knowledge of maritime law or particular aspects thereof, the following publications are suggested:

ARZT, Marine Laws-Navigation and Safety (Equity House, 1953). Contains federal laws and international conventions governing maritime matters. Supplemented annually.

BAER, Admiralty Law of the Supreme Court (2nd ed. 1969, with 1973 Cumulative Supplement). The leading comprehensive compilation of admiralty cases decided by the U.S. Supreme Court.

BENEDICT ON ADMIRALTY, 7th ed. by Knauth, rev. 1968, (Baker, Voorhis & Co., Inc.) This is a comprehensive treatise in several volumes covering the procedural law of admiralty in the courts of the United States.

FARWELL & PRUNSKI, The Rules of the Nautical Road, 4th ed. (U.S. Naval Institute, 1967). Contains the texts and commentary on the rules of the road.

GILMORE & BLACK, The Law of Admiralty (Foundation Press, 2d ed, 1975). A more recent textbook on the substantive law.

GRIFFIN ON COLLISION (American Maritime Cases, Inc., 1949). A comprehensive statement of the principles of collision law as applied by the American courts.

NORRIS, Maritime Personnel Injuries (Baker, Voorhis & Co., Inc., 2nd ed. 1966). The law as to harbor workers, passengers and visitors, with annual supplements.

PARKS, Law of Tug, Tow and Pilotage (Cornell Maritime Press, Inc., 1971). A definitive volume on the law of towage and pilotage.

The various Rules of the Road are also contained in the following publications which may be obtained from Coast Guard Marine Inspection Offices in major ports, or from the Commandant of the Coast Guard;

CG-169, Rules of the Road, International - Inland.

CG-172, Rules of the Road - Great Lakes.

CG-184, Rules of the Road - Western Rivers.

APPENDIX SECTION – 13

WAIVER OF EXTRADITION (See section 1302)

"I, ____________________, United States Navy (United States Marine Corps), having been advised of my rights to formal extradition as provided for in section 1302 JAG Manual by ______________________________ of ______________________,
(name of military or civilian attorney) (address of attorney)
waive such rights and agree to accompany ____________________, a representative of the State of ____________________, into the territorial limits of said State. I have been advised that the crime which I am charged to have committed in the State of ____________________ is as follows:

____
(Signature)

WITNESSED:

____
(Signature of witness)

DELIVERY AGREEMENT (See section 1305)

"In consideration of the delivery of ______________________________ , United States
(name of person delivered)

Navy (United States Marine Corps), to ________________, at ________________,

for trial upon the charge of ________________, I hereby agree pursuant to the

authority vested in me as ________________ that ______________________________,
(name of person delivered)

United States Navy (United States Marine Corps) will be transported to the State of

________________ without expense to him or the United States and that the

Commanding Officer of the ________________ will be notified immediately of the

outcome of the trial and that the said ______________________________, will be
(name of person delivered)

returned to the ________________, or to such place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, provided that the Department of the Navy shall then desire his return."

(See sections 1310 and 1315)

From: Commanding Officer
To: Judge Advocate General of the Navy

Subj: Delivery refused to __________________ authorities; case of [rank, full name, social security number, U.S. Navy/Marine Corps (or Reserve)]

Ref: (a) (Previous telephone or message notification to JAG
(b) JAGMAN section 1310
(c) JAGMAN section 1308

Encl: Copy Warrant of Arrest dtd

1. As reported by reference (a), and in accordance with reference (b), report is made that upon presentation of a valid warrant of arrest charging violation of (crime charged), (name of accused) was refused delivery to (sheriff, etc., of county, State, etc.) on (date) because (explain extraordinary circumstances) in accordance with reference (c).

2. Enclosure (1) is forwarded for information.

____
By direction

Copy to:
COMNAVMILPERSCOM/CMC (Code JAM-1)

(See sections 1310 and 1315)

From: Commanding Officer
To: Chief of Naval Personnel/Commandant of the Marine Corps
(Code JAM-1)

Subj: Delivery refused to__________________authorities; case of
(rank, full name, social security number, U.S. Navy/Marine Corps
(or Reserve))

Ref: (a) JAGMAN § 1310
(b) JAGMAN § 1308

Encl: (1) Copy Warrant of Arrest dtd

1. In accordance with reference (a), report is made that upon presentation of a valid warrant of arrest charging violation of (crime charged), (name of accused) was refused delivery to (sheriff, etc., of county, State, etc.) on (date) because (disciplinary proceedings pending, etc.) in accordance with reference (b).

2. ________________________________ has been charged with
____ Article
__________________________ of the Uniform Code of Military Justice.

3. Enclosure (1) is forwarded for information.

____
By direction

Copy to:
Navy JAG (Code 14L)

APPENDIX SECTION – 15

(See section 1501)

CHAPTER 11 of 37 US Code (§601-604)

Payments to Mentally Incompetent Persons
Sec.
601. Applicability.
602. Payments: designation of person to receive amounts due.
603. Regulations.
604. Determination of Secretary final.

§601. Applicability

This chapter applies to—

(1) members of a uniformed service who are on active duty (other than for training) or who are on a retired list of that service; and

(2) members of the Fleet Reserve or Fleet Marine Corps Reserve.

§ 602. Payments: designation of person to receive amounts due

(a) Active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, that are otherwise payable to a member to whom this chapter applies and who, in the opinion of a board of medical officers or physicians, is mentally incapable of managing his affairs, may be paid for that member's use or benefit to any person designated by the Secretary concerned, or by any officer to whom he delegates his authority under this section, without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

(b) The board shall consist of at least three qualified medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, appointed from available medical officers or physicians under his jurisdiction by the head of whichever of the following is providing medical treatment for the member, or by a person designated by that head—

(1) Department of the Army;
(2) Department of the Navy;
(3) Department of the Air Force;
(4) Department of Health, Education, and Welfare; or
(5) Veterans' Administration.

If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.

(c) A payment made to a person who is designated under this section discharges the obligation of the United States as to the amount paid.

(d) A person serving in a legal, medical, fiduciary, or other capacity, may not demand or accept a fee, commission, or other charge for any service performed under this chapter.

(e) This section does not apply in any case in which a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction, except as to payments made before the paying agency of the department concerned receives notice of that appointment.

(f) A person who is designated to receive payments under this section shall furnish satisfactory assurance that the amounts received by him will be applied to the use and benefit of the incompetent member, and, where the payments may reasonably be expected to be more than $1,000 shall provide a suitable bond to be paid for out of amounts due the incompetent member.

§ 603. Regulations

The Secretary concerned and the Administrator of Veterans' Affairs shall prescribe regulations necessary to carry out this chapter.

§ 604. Determination of Secretary final

The determination as to the person authorized to receive a payment under section 602 of this title is final and is not subject to review by an official of the United States or a court.

APPENDIX SECTION – 18

(See chapter XVIII)

TABLE OF CUSTOMS EXEMPTIONS

	BASIS FOR EXEMPTION	ELIGIBILITY FOR EXEMPTION	FREQUENCY OF ELIGIBILITY	VALUE LIMITATIONS	ALCOHOL AND TOBACCO LIMITATIONS	POSSESSION REQUIREMENTS
EXEMPTIONS FOR RETURNING RESIDENTS	19 USC 1202 items 813.30 and 813.31	Return to U.S. after 48 hours beyond territorial limits plus visit to foreign country or insular possession of U.S.	Once each 30 days	$300 generally, $600 from Guam, American Samoa, Virgin Islands of U.S.	200 cigarettes; 100 cigars; 1 liter generally, 4 liters from Guam, American Samoa, Virgin Islands of U.S.	Possession at time of entry, unless required in an insular possession of the U.S.
EXEMPTIONS FOR NON-RESIDENTS	19 USC 1202 items 812.10-812.40 TD 72-91	Return to U.S. for short visit during extended duty abroad.	Once each 6 months for gifts only	All personal items $100 gifts, excluding alcoholic beverages and cigarettes but including up to 100 cigars	100 cigars, or 200 cigarettes, or 2 Kg. tobacco; 1 liter	Possession at time of entry
EXTENDED-DUTY EXEMPTIONS	19 USC 1202 item 817.00; Customs Regulations, section 10.26a	Return to U.S. upon termination of extended duty	One exemption at end of extended duty assignment	None	100 cigars; 1 gallon to include not more than 1 quart of non-U.S. beverages*	Possession at overseas duty station and at time of entry*
GIFTS	19 USC 1321; Customs Regulations, section 145.32	Presence in foreign country	One exemption each day measured by receipt	May not exceed $25 per donee in any day based on date of receipt in U.S. This amount is increased to $40.00 if the gift is from American Samoa, Guam, or the Virgin Islands.	No alcoholic beverages or tobacco permitted; perfume in shipment valued in excess of $5 not permitted	None
GIFTS SENT BY COMBAT-ZONE PERSONNEL	19 USC 1202 item 915.25; Customs Regulations, section 54.3	Armed Forces member serving in combat zone	No limitation	Amounts in excess of $50 per shipment are dutiable	No nontax-paid American cigarettes or alcoholic beverages	Must have been purchased in or through authorized agency of Armed Forces of U.S.
SEA-STORE CIGARETTES	19 USC 1321*	Voyage beyond territorial limits of U.S. without touching port outside U.S.	One exemption per voyage	None	2 opened packs ashore at any one time; 15 packs total	Must remain in personal possession

*Subject to change on short notice by Commissioner of Customs.

APPENDIX SECTION – 19

GUIDELINES FOR THE NAVY EXPANDED LEGAL ASSISTANCE PROGRAM
(See section 1906a)

1. Services under the Expanded Legal Assistance Program may be given (1) whenever a judge advocate is locally admitted or (2) whenever an agreement with cognizant State and local bar authorities permit non-locally-admitted judge advocates to provide representation. Even though no agreement is necessary when a judge advocate is admitted locally, consideration should be given to effecting liaison with cognizant bar officials. Any agreement establishing an Expanded Program should clearly define, as a minimum, (a) persons who are to be eligible for full representation under the Program, (b) the nature of the services which will be available, and (c) the qualifications of the legal assistance officers who will represent clients under the Program. The agreement need not be formal; however, a written memorandum of understanding between authorized officials of State and local bar associations and the staff judge advocate or legal assistance officer will avoid misunderstandings. The agreement should be approved by the local courts. A copy of each agreement will be forwarded to the Judge Advocate General. Authorization shall be obtained from the Judge Advocate General prior to the establishment of an Expanded Program.

2. The following guidelines are established for the operation of this Program:

a. Persons Eligible for Legal Assistance. The Expanded Legal Assistance Program may provide full representation to:

(1) Military personnel in pay grades E-3 and below;

(2) Married military personnel in pay grades E-4 and below and their dependents;

(3) Other military personnel who are unable to afford the services of an attorney without substantial financial hardship. Cases of military personnel within this category will be fully documented as to the justification for providing representation under the Expanded Legal Assistance Program.

b. Persons Ineligible for Legal Assistance.

(1) Personnel in pay grades E-4 and below will not be eligible if they have a source of substantial income independent of their military pay.

(2) Legal assistance services under the Expanded Program will not be available to retired military personnel or their dependents.

c. Services Available.

(1) Nature of representation. The objective of the Expanded Legal Assistance Program is to provide full representation for eligible clients. A legal assistance officer may write letters on behalf of his client; negotiate with another party or his lawyer; prepare all types of legal documents, including pleadings; and, where locally admitted or permitted by agreement, appear in court as attorney of record.

(2) Types of cases to be handled. Expanded Legal Assistance Programs may accept, but need not necessarily be limited to, the following types of cases:

1. Adoptions
2. Name changes
3. Routine or "short-form" statutory probates of small estates
4. Divorce, separation, and child-custody matters
5. Paternity
6. Nonsupport and Uniform Reciprocal Enforcement of Support Act cases
7. Collection of security deposits and debts
8. Actions involving conditional-sales contracts or warranties
9. Minor tort cases, in particular where there is a clear claim and an unjustified refusal to pay
10. Defense of disputed indebtedness
11. Criminal defense in traffic and minor misdemeanor cases

Services under the Expanded Legal Assistance Program are not intended to deprive civilian attorneys of sources of income. To the contrary, they are intended to provide needed legal services for eligible personnel who cannot provide a source of income to the civilian bar.

d. Qualifications of Legal Assistance Officers. In many cases, a legal assistance officer will not be a member of the bar of the State in which he is stationed and where he will be providing assistance. Every effort should therefore be made to enter into agreements which provide for representation by a legal assistance officer who is not a member of the local State bar but who is a member of the bar of a Federal court or of the highest court of any State. The agreements may provide for a legal assistance officer:

(1) To be generally admitted, or

(2) To be specifically admitted to the bar of the State where he is stationed:

(a) During his tour of duty, or
(b) On a year-to-year basis, or
(c) On a case-to-case basis, or

(3) To associate with an Armed Forces Reserve lawyer or cooperating civilian attorney, either with or without the civilian lawyer's presence during the court appearance, or

(4) To be admitted under any other conditions which will carry out the intent of this Program.

e. Correspondence, Legal Documents, and Pleadings. Pleadings prepared by a legal assistance officer under the Program may be signed by the legal assistance officer in this form: "JOHN DOE, Lieutenant, JAGC, USN, Legal Assistance Officer, U. S. Naval Station, (city, state)." The address of the legal assistance officer for purposes of service of process should follow the form: "Legal

Assistance Office, U. S. Naval Station, (city, state)." Letters prepared by the legal assistance officer as attorney for a client under the Expanded Legal Assistance Program may be on official letterhead stationery and signed in the form: "JOHN DOE, Lieutenant, JAGC, USN, Legal Assistance Officer." Such letters should be scrupulously framed to avoid any express or implied indication that the signer is speaking for the command shown on the letterhead or in any capacity other than that of legal assistance officer.

f. Court Appearances. Court and other appearances by legal assistance officers may be made either in uniform or in civilian clothes.

g. Representation of Opposing Parties or Interests. In the event that two eligible servicemen, or an eligible serviceman and his dependent, both seek assistance from the same office on the same matter and their interests are in conflict, the party first seeking assistance will be entitled to representation. The other party shall be advised that he is also entitled to assistance, but that the assistance will have to be obtained from another Navy or Marine Corps legal assistance office, from a legal assistance office of another service, from a Naval Reserve lawyer, from a legal-aid office, or from a cooperating civilian attorney. A Navy judge advocate shall assist the other party in obtaining such representation, and the judge advocate representing the first party may assist in obtaining such representation for the other party if his client has knowledge of the circumstances and interposes no objection.

3. Before representing clients under the Expanded Legal Assistance Program, a legal assistance officer should be thoroughly familiar with the laws and procedures of the State and locality where he will be practicing. A legal assistance officer shall be guided at all times by the Code of Professional Responsibility of the American Bar Association. The director of the law center or senior staff judge advocate of the command will maintain close and continuing supervision over the performance of his legal assistance officer(s) in this Expanded Program with a view toward ensuring that there is compliance with locally-agreed guidelines and the policies set forth herein.

4. All fees and costs incident to his case shall be paid by the client, and not by the Department of the Navy. This restriction does not prohibit the client from borrowing or otherwise obtaining funds from the Navy Relief Society or other organization to pay necessary costs, if such arrangements can be made.

5. Effect on Existing Legal Assistance Program. The Expanded Legal Assistance Program will in no way curtail or diminish the legal assistance given to military personnel and their dependents under the traditional legal assistance program.

APPENDIX SECTION – 20

See section 2012

CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Prepare in ink or typewriter. Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary.

FORM APPROVED
OMB NO.
43-R0597

1. SUBMIT TO:
11th Naval District
San Diego, California

2. NAME AND ADDRESS OF CLAIMANT *(Number, street, city, State, and Zip Code)*
Josephine Doe
555 Sunset Drive, Westho, California
92345

3. TYPE OF EMPLOYMENT
☐ MILITARY
☒ CIVILIAN

4. AGE
30

5. MARITAL STATUS
married

6. NAME AND ADDRESS OF SPOUSE, IF ANY *(Number, street, city, State, and Zip Code)*
Richard Doe (same address as claimant)

7. PLACE OF ACCIDENT *(Give city or town and State; if outside city limits, indicate mileage or distance to nearest city or town)*
one mile south of Seaview, California, at the intersection of Thruway Road and Aside Street

8. DATE AND DAY OF ACCIDENT
29 December 1979

9. TIME *(A.M. OR P.M.)*
0415 hours

10. AMOUNT OF CLAIM *(in dollars)*

A. PROPERTY DAMAGE	B. PERSONAL INJURY	C. WRONGFUL DEATH	D. TOTAL
$438.70	$500.00		$938.70

11. DESCRIPTION OF ACCIDENT *(State below, in detail, all known facts and circumstances attending the damage, injury, or death, identifying persons and property involved and the cause thereof)* The claimant accompanied by her husband was driving her father's (Moe B. Banks) 1978 Ford Sedan north on Thruway Road. She was stopped for a red traffic light at the intersection of Thruway Road and Aside Street when her vehicle was struck from the read by a 1975 Navy pickup truck, Bureau #5387765, driven by SN Ready M. Rickless, USN, from the Naval Station, Little Harbor, California

12. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT *(Number, street, city, State, and Zip Code)*
Moe B. Banks, 553 Sunset Drive, Westho, California 92345

BRIEFLY DESCRIBE KIND AND LOCATION OF PROPERTY AND NATURE AND EXTENT OF DAMAGE *(See instructions on reverse side for method of substantiating claim.)*
The rear bumper, trunk and fenders of the 1978 Ford were damaged extensively. Refer to the attached police report and to the enclosed estimates of repair.

13. PERSONAL INJURY

STATE NATURE AND EXTENT OF INJURY WHICH FORMS THE BASIS OF THIS CLAIM
The claimant suffered severe neck pain which Dr. T.C. Bandaid, (302 Business Street Westho, California) diagnosed as whiplash injury. See Dr. Bandaid's statement and bills, copies of which are attached.

14. WITNESSES

NAME	ADDRESS *(Number, street, city, State, and Zip Code)*
Richard Doe	(Same as claimant)

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

15. SIGNATURE OF CLAIMANT *(This signature should be used in all future correspondence)*
Josephine Doe

16. DATE OF CLAIM
30 March 1979

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant shall forfeit and pay to the United States the sum of $2,000, plus double the amount of damages sustained by the United States. *(See R.S. §3490, 5438; 31 U.S.C. 231.)*

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine of not more than $10,000 or imprisonment for not more than 5 years or both. *(See 62 Stat. 698, 749; 18 U.S.C. 287, 1001.)*

95-106

STANDARD FORM 95 (Rev. 6-78)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 *et seq.*, 28 U.S.C. 2671 *et seq.*, 28 C.F.R. 14.3.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid"

INSTRUCTIONS

Complete all items—Insert the word NONE where applicable

Claims for damage to or for loss or destruction of property, or for personal injury, must be signed by the owner of the property damaged or lost or the injured person. If, by reason of death, other disability or for reasons deemed satisfactory by the Government, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing authority to act.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 10 of this form. Separate claims for personal injury and property damage are not acceptable.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged; or by two or more competitive bidders, and should be certified as being just and correct.

Any further instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side.

(d) Failure to completely execute this form to supply the requested material within two years from the date the allegations accrued may render your claim "invalid"

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

17. DO YOU CARRY ACCIDENT INSURANCE? ☒ YES, IF YES, GIVE NAME AND ADDRESS OF INSURANCE COMPANY *(Number, street, city, State, and Zip Code)* AND POLICY NUMBER. ☐ NO

NOPAY Auto Assurance
1258 Gotham
Big City, California 92678

18. HAVE YOU FILED CLAIM ON YOUR INSURANCE CARRIER IN THIS INSTANCE, AND IF SO, IS IT FULL COVERAGE OR DEDUCTIBLE?

Yes, deductable

19. IF DEDUCTIBLE, STATE AMOUNT

$100.00

20. IF CLAIM HAS BEEN FILED WITH YOUR CARRIER, WHAT ACTION HAS YOUR INSURER TAKEN OR PROPOSES TO TAKE WITH REFERENCE TO YOUR CLAIM? *(It is necessary that you ascertain these facts)*

No action taken

21. DO YOU CARRY PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE? ☒ YES, IF YES, GIVE NAME AND ADDRESS OF INSURANCE CARRIER *(Number, street, city, State, and Zip Code)* ☐ NO

NOPAY Auto Assurance
(same as above)

☆ GPO : 1978 O—260-460(51)

(See section 2018)

SETTLEMENT AGREEMENT

Judge Advocate General
Department of the Navy
200 Stovall Street
Alexandria, Virginia 22332

Dear Sir:

[I] [We]________________________________ hereby agree to accept the sum of ________________ DOLLARS AND [NO] CENTS ($___ , ___ . __) in full satisfaction and final settlement of any and all claims [I] [we] now have or in the future may have against the UNITED STATES OF AMERICA and its agents and employees, allegedly arising from [medical malpractice at the Naval Regional Medical Center, ________________ ,] [an automobile accident at ________________]
[________________] [on or about ________________ 19___ ,] [from on or about
________________ , 19___ to ________________ ,] , resulting in [injuries
to ________________] [the death of ________________]
[________________] .

In consideration for the payment of the sum stated above, [I] [we] will indemnify and hold harmless the UNITED STATES OF AMERICA and its agents and employees from any and all claims, actions, or proceedings which may hereafter be asserted or brought by or on behalf of any person or entity to recover for damages arising out of or related to [(my) (our) interest in] * the matters alleged in the claim filed by [me] [us].

**Pursuant to 28 U.S.C. §2678 (1976), [I] [we], the undersigned, further agree that an attorney's fee in the amount of not more than 20% or ________________ DOLLARS AND [NO] CENTS ($____ , _____ . ___) shall be paid to ________________ , Esquire, [my] [our] attorney, which sum shall be paid out of the proceeds of the settlement amount payable to [me] [us] and not in addition thereto.

____
ATTORNEY

____
[CLAIMANT]

____
DATE

____
DATE

____
WITNESS

____
ADDRESS OF WITNESS

*This phrase may be appropriate in cases where there are known multiple claimants or subrogees.
**This sentence is not used in Military Claims Act cases.

(See section 2018)

SETTLEMENT AGREEMENT

Judge Advocate General
Department of the Navy
200 Stovall Street
Alexandria, Virginia 22332

Dear Sir:

[I] [We] ________________________ individually and as the [father] [and] [mother] and legal guardian of [my] [our] minor [child] [children], ________________ ________________ and [I] [we] ________________________ hereby agree to accept the sum of ________________________ DOLLARS AND [NO] CENTS ($____, ____ . ___) in full satisfaction and final settlement of any and all claims we now have or in the future may have against the UNITED STATES OF AMERICA and its agents and employees, allegedly arising from [medical malpractice at the Naval Regional Medical Center, ________________ ________________,] [an automobile accident at ________________] [________________] [on or about ________________, 19___,] [from on or about ________________, 19___, to ________________,] resulting in [injuries to ________________] [the death of ________________] [________________].

In consideration for the payment of the sum stated above, we agree that we will indemnify and hold harmless the UNITED STATES OF AMERICA and its agents and employees from any and all claims, actions, or proceedings which may hereafter be asserted or brought by or on behalf of any person or entity to recover for damages arising out of or related to [our interest in] * the matters alleged in the claim filed by us.

**Pursuant to 28 U.S.C. §2678 (1976), we, the undersigned, further agree that an attorney's fee in the amount of not more than 20% or ________________________ DOLLARS AND [NO] CENTS ($____, ______ . ___) shall be paid to ________________ ________________, Esquire, our attorney, which sum shall be paid out of the proceeds of the settlement amount payable to us and not in addition thereto.

________________________ ATTORNEY	________________________ [CLAIMANT] Individually and as legal guardian and [father] and [mother] of [my] [our] minor [child] [children]
________________________ DATE	
________________________ WITNESS	________________________
________________________ ADDRESS OF WITNESS	________________________

*This phrase may be appropriate in cases where there are known multiple claimants or subrogees.
**This sentence is not used in Military Claims Act cases.

(See section 2007b)

CERTIFICATE FOR LIMITED REPORT FORMAT

Date:______________

I certify that I have investigated the ( ) accident or ( ) incident, that the facts fully substantiate the claim, and that I have taken the following action:

____

____

____

____

____

____

(If more space is required continue on back)

I further find that the amount claimed represents the claimant's loss and recommend payment in the amount of $____________.

Encl: __________ Std Form 91
__________ Police Report
__________ Paid Bill or Estimate
__________ Other

____
Investigating Officer

____
Commanding Officer

Approved for payment under ( ) Federal Tort Claims Act (sections 2001-2016 JAG Manual)
( ) Military Claims Act (sections 2020-2029 JAG Manual)

____
Authorized adjudicating officer

Note:
1. Indicate either accident or incident.
2. In the space provided for noting the action taken by the investigating officer, he should describe very briefly the limited investigation upon which his recommendation is based -- for example, information (estimates, etc.) received by telephone from_______________; interviewed Government driver (other driver, witnesses, etc.); inspected damaged property; violations of local law; etc.
3. The Standard Form 91 must be included in all cases involving motor-vehicle accidents.
4. Indicate under which Act claim will be paid.

Standard Form 1145
September 1973
4 Treasury FRM 2000
1145-105

VOUCHER FOR PAYMENT UNDER FEDERAL TORT CLAIMS ACT

Voucher No. Do not fill in
Schedule No. Do not fill in
Claim No. Do not fill in

PAID BY

U.S. Department of the Navy -- Naval Legal Service Office, Philadelphia
(Department, bureau, or establishment)

Voucher prepared at U.S. Naval Base, Philadelphia, PA 19112 May 3, 1979
(Give place and date)

THE UNITED STATES, Dr.,

To John Doe, Sr., as Guardian of John Doe, Jr., & Joseph Smith, Esq.
c/o Smith, Jones & Black
(Payee(s))
Address 312 West Fourth St., P.O. Box 961, New York, NY 10000

Amount claimed, $ 10,000.00 Date claim accrued January 18, 1979

Amount of award, compromise, or settlement FOUR THOUSAND DOLLARS AND NO CENTS $ 4,000.00

Brief Description of Claim: (See attachments for further explanation in detail.)

On January 18, 1979, a U.S. Navy vehicle operated by Joe Doakes while acting within the scope of his Federal employment, struck a vehicle in which claimant was a passenger. The accident occurred at the intersection of Main and Broad Avenues, Paoli, PA. The claimant was not contributorily negligent, and he has agreed in writing to accept the above sum in full settlement of his claim. This claim is considered proper for payment under the Federal Torts Claims Act (38 U.S.C. 2671-2680).

ACCEPTANCE BY CLAIMANT(S)

I, (We), the claimant(s), do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), and agree that said acceptance constitutes a complete release by me (us) of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Date Do not fill in, 19......
SIGN ORIGINAL ONLY
(Claimant)
(Claimant)

Not necessary. Enclose SF-95 (and settlement agreement if payment is less than amount stated on SF-95)

This claim has been fully examined in accordance with the provisions of the Federal Tort Claims Act (28 U.S.C. 2672), and is approved in the

amount of $ 4,000.00

(signature)
(Head of Federal agency, or authorized designee)

Date May 3, 19 79.

SIGN ORIGINAL ONLY

Title Authorized by JAGMAN 2080 Commanding Officer NLSO, Philadelphia

Pursuant to the authority vested in me, I certify that this voucher is correct and proper for payment in the

amount of $ Do not fill in

To be signed by GAO
(Authorized certifying officer)

Date Do not fill in, 19......

SIGN ORIGINAL ONLY

Title Do not fill in

ACCOUNTING CLASSIFICATION

U.S. GOVERNMENT PRINTING OFFICE

Paid by Check No. ....

TABLE OF DELEGATED AND DESIGNATED AUTHORITY TO PAY A CLAIM

A.

DELEGATED AND DESIGNATED AUTHORITY	FEDERAL TORT CLAIMS ACT	MILITARY CLAIMS ACT	ADVANCE PAYMENTS*	NONSCOPE CLAIMS
JUDGE ADVOCATE GENERAL	unlimited**	$25,000***	$1,000	$1,000
DEPUTY JUDGE ADVOCATE GENERAL	unlimited**	$ 5,000	$1,000	$1,000
ASSISTANT JUDGE ADVOCATE GENERAL (Civil Law)	unlimited**	$ 5,000	$1,000	$1,000
DEPUTY ASSISTANT JUDGE ADVOCATE GENERAL (Claims)	$25,000	$ 5,000	$1,000	$1,000
HEAD, FEDERAL TORT CLAIMS BRANCH, CLAIMS DIVISION, OJAG	$20,000	$ 5,000	$1,000	$1,000
HEAD, MILITARY CLAIMS BRANCH, OJAG		$ 5,000		
COMMANDING OFFICERS OF NAVAL LEGAL SERVICE OFFICES; COMMANDING OFFICER, U.S. NAVAL STATION, PANAMA CANAL; COMMANDER, U.S. NAVAL BASE, ROOSEVELT ROADS, PUERTO RICO; OFFICERS IN CHARGE OF NAVAL LEGAL SERVICE OFFICES DETACHMENTS WHEN SPECIFICALLY DESIGNATED BY COGNIZANT COMMANDING OFFICERS OF NAVAL LEGAL SERVICE OFFICES: AND CLAIMS OFFICERS AT NAVAL LEGAL SERVICE OFFICES, AT THE U.S. NAVAL STATION, PANAMA CANAL, AND AT THE U.S. NAVAL BASE, ROOSEVELT ROADS, PUERTO RICO, WHEN SPECIFICALLY DESIGNATED BY THE COGNIZANT COMMANDER, OR COMMANDING OFFICER	$20,000	$ 5,000	$1,000	$1,000
OVERSEAS COMMANDS WITH A JUDGE ADVOCATE GENERAL'S CORPS OFFICER OR A JUDGE ADVOCATE OF THE MARINE CORPS ATTACHED		$ 5,000	$1,000	$1,000

B. The authority to deny Federal Tort Claims is double the Federal Tort Claims Act approval authority shown above. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), and the Deputy Assistant Judge Advocate General (Claims) may deny Federal Tort Claims in any amount. The Judge Advocate General may deny Military Claims in any amount. All others may deny only up to the amount of their adjudicating authority.

C. Nonscope claims adjudicated in the field will be forwarded to the Judge Advocate General for payment.

D. Foreign Claims: The Judge Advocate General may approve a Foreign Claim up to $25,000. Any excess must be referred to Congress. A Foreign Claims Commission (depending on its constitution) may approve claims for payment from $5,000 to $20,000.

*advance payment of military and foreign claims

**need approval of Dept. Justice over $25,000

***over $25,000 referred to GAO for payment

TABLE OF TERRITORIAL RESPONSIBILITY FOR PAYMENT OF CLAIMS

A. Federal Tort Claims, Military Claims, Advance Payment Claims, Nonscope Claims, and Affirmative Claims

RESPONSIBLE COMMAND	TERRITORY
NAVLEGSVCOFF NEWPORT	MAINE, VERMONT, NEW HAMPSHIRE, MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, AND NEW YORK
NAVLEGSVCOFF PHILADELPHIA	PENNSYLVANIA, NEW JERSEY, AND DELAWARE
NAVLEGSVCOFF WASHINGTON, D.C.	MARYLAND, THE DISTRICT OF COLUMBIA, AND VIRGINIA COUNTIES IN NAVAL DISTRICT WASHINGTON
NAVLEGSVCOFF NORFOLK	VIRGINIA LESS COUNTIES IN NAVAL DISTRICT WASHINGTON, WEST VIRGINIA, AND PORTIONS OF NORTH CAROLINA IN THE FORMER FIFTH NAVAL DISTRICT
NAVLEGSVCOFF CHARLESTON	NORTH CAROLINA LESS PORTIONS IN THE FORMER FIFTH NAVAL DISTRICT, SOUTH CAROLINA, AND GEORGIA
NAVLEGSVCOFF JACKSONVILLE	THAT PORTION OF FLORIDA EAST OF THE WESTERN BOUNDARIES OF GADSEN, LIBERTY, AND FRANKLIN COUNTIES
NAVLEGSVCOFF PENSACOLA	THAT PORTION OF FLORIDA WEST OF THE EASTERN BOUNDARIES OF JACKSON, CALHOUN, AND GULF COUNTIES, ALABAMA, MISSISSIPPI AND LOUISIANA
NAVLEGSVCOFF MEMPHIS	MISSOURI, TENNESSEE, KENTUCKY, AND ARKANSAS
NAVLEGSVCOFF GREAT LAKES	NORTH DAKOTA, SOUTH DAKOTA, NEBRASKA, MINNESOTA, MICHIGAN, IOWA, WISCONSIN, OHIO, ILLINOIS, AND INDIANA
NAVLEGSVCOFF CORPUS CHRISTI	TEXAS
NAVLEGSVCOFF SAN DIEGO	THAT PORTION OF CALIFORNIA IN SAN DIEGO, IMPERIAL, RIVERSIDE, AND SAN BERNARDINO COUNTIES, AND ARIZONA, NEW MEXICO, AND OKLAHOMA
NAVLEGSVCOFF LONG BEACH	THAT PORTION OF CALIFORNIA IN KERN, SANTA BARBARA, VENTURA, LOS ANGELES, AND ORANGE COUNTIES
NAVLEGSVCOFF SAN FRANCISCO	THAT PORTION OF CALIFORNIA NORTH OF THE SOUTHERN BOUNDARIES OF SAN LUIS OBISPO, KINGS, TULARE, AND INYO COUNTIES, AND NEVADA, UTAH, COLORADO, AND KANSAS
NAVLEGSVCOFF SEATTLE	WASHINGTON, OREGON, IDAHO, MONTANA, WYOMING, AND ALASKA
NAVLEGSVCOFF PEARL HARBOR	HAWAII, INCLUDING MIDWAY AND PACIFIC ISLAND POSSESSIONS SERVICED FROM HAWAII
U.S. NAVAL BASE, ROOSEVELT ROADS, PUERTO RICO	PUERTO RICO AND CARIBBEAN POSSESSIONS

A. (continued)

NAVAL STATION, PANAMA CANAL	CANAL ZONE
NAVLEGSVCOFF MARIANAS	GUAM

B. *__Military Claims Outside of the United States__*: Military Claims procedures outside the United States are used primarily to pay claims for American citizens not covered by the Foreign Claims Act, and for damage to active duty servicemen's property not covered by the Personnel Claims Act, such as automobile collision cases. All Naval Legal Service Offices, and those overseas commands with a judge advocate and claims budget allotment, may process claims up to $5,000. Claims in excess of this amount must be adjudicated by the Judge Advocate General.

APPENDIX SECTION – 21

(See section 2108b)

From:
To: Commander, Military Sealift Command
58th Street and 1st Avenue, Brooklyn, New York 11250

Subj: Claim of (Grade, Full Name, SSAN)

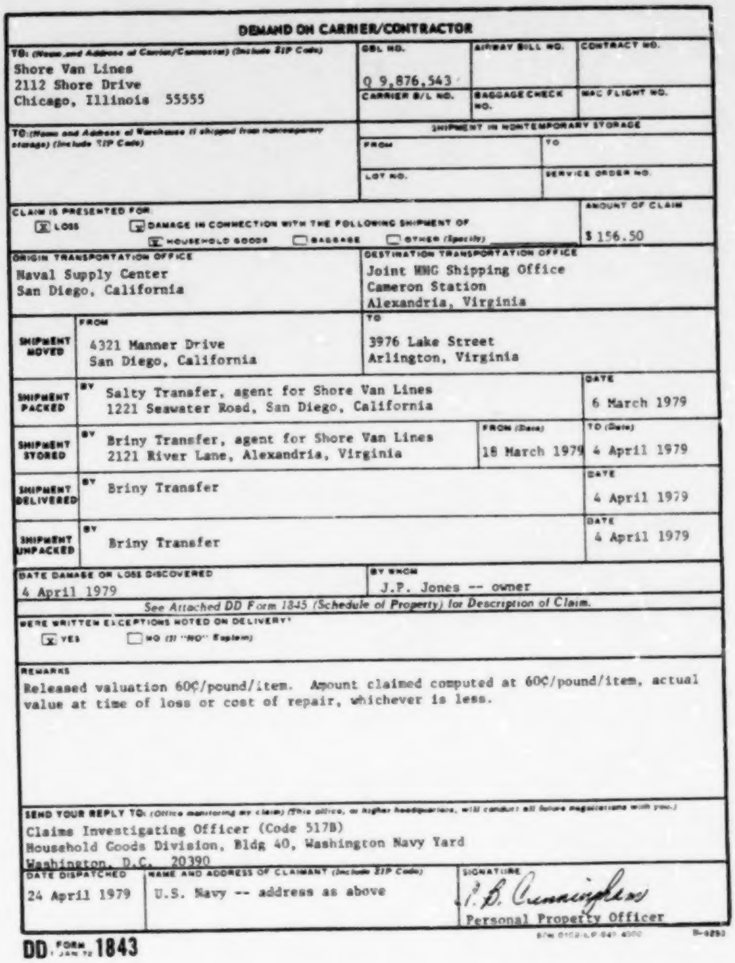
Ref: (a) Chapter XXI, JAG Manual, Section 2108

Encl: (1) Pay voucher
(2) Copy of subject claim

1. In accordance with reference (a), enclosures (1) and (2) are forwarded for action. Subject claim, which has been adjudicated and paid by the Department of the Navy, involves damage to (description of damaged item) occurring aboard the (name of ship) which sailed from (port of embarkation) on (date of departure) and discharged at (port of departure).

2. It is requested that recovery action be initiated against the ocean carrier in the amount of $________.

3. Upon completion of your action, it is requested that enclosures (1) and (2) and any amount recovered be transmitted to this office with advice as to the action taken.



DEMAND ON CARRIER/CONTRACTOR

TO: (Name and Address of Carrier/Contractor) (Include ZIP Code)
Shore Van Lines
2112 Shore Drive
Chicago, Illinois 55555

GBL NO.: Q 9,876,543
AIRWAY BILL NO.:
CONTRACT NO.:
CARRIER B/L NO.:
BAGGAGE CHECK NO.:
MAC FLIGHT NO.:

TO: (Name and Address of Warehouse if shipped from nontemporary storage) (Include ZIP Code)

SHIPMENT IN NONTEMPORARY STORAGE
FROM:
TO:
LOT NO.:
SERVICE ORDER NO.:

CLAIM IS PRESENTED FOR
☒ LOSS ☒ DAMAGE IN CONNECTION WITH THE FOLLOWING SHIPMENT OF
☒ HOUSEHOLD GOODS ☐ BAGGAGE ☐ OTHER (Specify)

AMOUNT OF CLAIM: $ 156.50

ORIGIN TRANSPORTATION OFFICE
Naval Supply Center
San Diego, California

DESTINATION TRANSPORTATION OFFICE
Joint HHG Shipping Office
Cameron Station
Alexandria, Virginia

SHIPMENT MOVED
FROM: 4321 Manner Drive
San Diego, California
TO: 3976 Lake Street
Arlington, Virginia

SHIPMENT PACKED
BY: Salty Transfer, agent for Shore Van Lines
1221 Seawater Road, San Diego, California
DATE: 6 March 1979

SHIPMENT STORED
BY: Briny Transfer, agent for Shore Van Lines
2121 River Lane, Alexandria, Virginia
FROM (Date): 18 March 1979
TO (Date): 4 April 1979

SHIPMENT DELIVERED
BY: Briny Transfer
DATE: 4 April 1979

SHIPMENT UNPACKED
BY: Briny Transfer
DATE: 4 April 1979

DATE DAMAGE OR LOSS DISCOVERED: 4 April 1979
BY WHOM: J.P. Jones -- owner

See Attached DD Form 1845 (Schedule of Property) for Description of Claim.

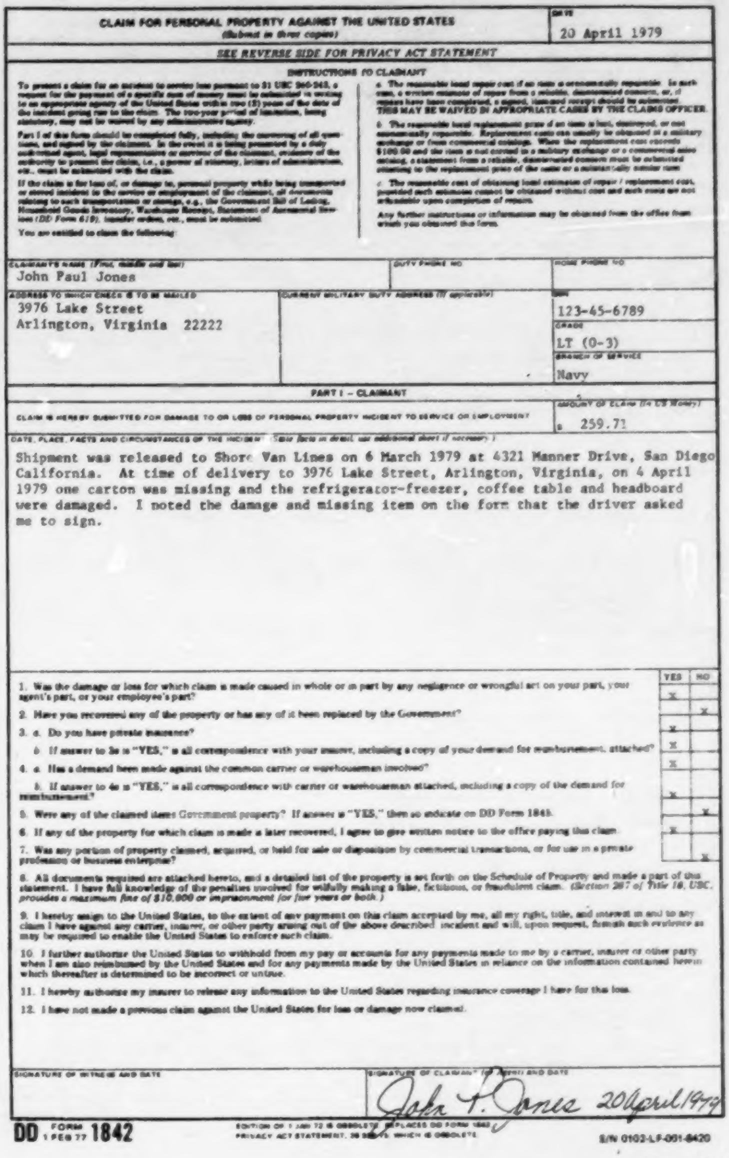
WERE WRITTEN EXCEPTIONS NOTED ON DELIVERY?
☒ YES ☐ NO (If "NO" Explain)

REMARKS
Released valuation 60¢/pound/item. Amount claimed computed at 60¢/pound/item, actual value at time of loss or cost of repair, whichever is less.

SEND YOUR REPLY TO: (Office monitoring my claim) (This office, or higher headquarters, will conduct all future negotiations with you.)
Claims Investigating Officer (Code 517B)
Household Goods Division, Bldg 40, Washington Navy Yard
Washington, D.C. 20390

DATE DISPATCHED: 24 April 1979
NAME AND ADDRESS OF CLAIMANT (Include ZIP Code): U.S. Navy -- address as above
SIGNATURE: P.B. Cunningham
Personal Property Officer

DD FORM 1 JAN 72 1843



CLAIM FOR PERSONAL PROPERTY AGAINST THE UNITED STATES
(Submit in three copies)

DATE
20 April 1979

SEE REVERSE SIDE FOR PRIVACY ACT STATEMENT

INSTRUCTIONS TO CLAIMANT

To present a claim for an incident to service loss pursuant to 31 USC 240-243, a request for the payment of a specific sum of money must be submitted in writing to an appropriate agency of the United States within two (2) years of the date of the incident giving rise to the claim. The two-year period of limitation, being statutory, may not be waived by any administrative agency.

Part I of this form should be completed fully, including the answering of all questions, and signed by the claimant. In the event it is being presented by a duly authorized agent, legal representative or survivor of the claimant, evidence of the authority to present the claim, i.e., a power of attorney, letters of administration, etc., must be submitted with the claim.

If the claim is for loss of, or damage to, personal property while being transported or stored incident to the service or employment of the claimant, all documents relating to such transportation or storage, e.g., the Government Bill of Lading, Household Goods Inventory, Warehouse Receipt, Statement of Accessorial Services (DD Form 619), transfer orders, etc., must be submitted.

You are entitled to claim the following:

a. The reasonable local repair cost if an item is economically repairable. In such case, a written estimate of repair from a reliable, disinterested concern, or, if repairs have been completed, a signed, itemized receipt should be submitted. THIS MAY BE WAIVED IN APPROPRIATE CASES BY THE CLAIMS OFFICER.

b. The reasonable local replacement price if an item is lost, destroyed, or not economically repairable. Replacement costs can usually be obtained at a military exchange or from commercial catalogs. When the replacement cost exceeds $100.00 and the item is not carried in a military exchange or a commercial sales catalog, a statement from a reliable, disinterested concern must be submitted attesting to the replacement price of the same or a substantially similar item.

c. The reasonable cost of obtaining local estimates of repair / replacement cost, provided such estimates cannot be obtained without cost and such costs are not refundable upon completion of repairs.

Any further instructions or information may be obtained from the office from which you obtained this form.

CLAIMANT'S NAME *(First, middle and last)* John Paul Jones	DUTY PHONE NO	HOME PHONE NO
ADDRESS TO WHICH CHECK IS TO BE MAILED 3976 Lake Street Arlington, Virginia 22222	CURRENT MILITARY DUTY ADDRESS *(If applicable)*	SSN 123-45-6789 GRADE LT (0-3) BRANCH OF SERVICE Navy

PART I – CLAIMANT

CLAIM IS HEREBY SUBMITTED FOR DAMAGE TO OR LOSS OF PERSONAL PROPERTY INCIDENT TO SERVICE OR EMPLOYMENT

AMOUNT OF CLAIM *(In US Money)*
$ 259.71

DATE, PLACE, FACTS AND CIRCUMSTANCES OF THE INCIDENT *(State facts in detail; use additional sheet if necessary.)*

Shipment was released to Shore Van Lines on 6 March 1979 at 4321 Manner Drive, San Diego California. At time of delivery to 3976 Lake Street, Arlington, Virginia, on 4 April 1979 one carton was missing and the refrigerator-freezer, coffee table and headboard were damaged. I noted the damage and missing item on the form that the driver asked me to sign.

	YES	NO
1. Was the damage or loss for which claim is made caused in whole or in part by any negligence or wrongful act on your part, your agent's part, or your employee's part?	X	
2. Have you recovered any of the property or has any of it been replaced by the Government?		X
3. *a.* Do you have private insurance?	X	
b. If answer to 3a is "YES," is all correspondence with your insurer, including a copy of your demand for reimbursement, attached?	X	
4. *a.* Has a demand been made against the common carrier or warehouseman involved?	X	
b. If answer to 4a is "YES," is all correspondence with carrier or warehouseman attached, including a copy of the demand for reimbursement?	X	
5. Were any of the claimed items Government property? If answer is "YES," then so indicate on DD Form 1845.		X
6. If any of the property for which claim is made is later recovered, I agree to give written notice to the office paying this claim.	X	
7. Was any portion of property claimed, acquired, or held for sale or disposition by commercial transactions, or for use in a private profession or business enterprise?		X

8. All documents required are attached hereto, and a detailed list of the property is set forth on the Schedule of Property and made a part of this statement. I have full knowledge of the penalties involved for wilfully making a false, fictitious, or fraudulent claim. *(Section 287 of Title 18, USC, provides a maximum fine of $10,000 or imprisonment for five years or both.)*

9. I hereby assign to the United States, to the extent of any payment on this claim accepted by me, all my right, title, and interest in and to any claim I have against any carrier, insurer, or other party arising out of the above described incident and will, upon request, furnish such evidence as may be required to enable the United States to enforce such claim.

10. I further authorize the United States to withhold from my pay or accounts for any payments made to me by a carrier, insurer or other party when I am also reimbursed by the United States and for any payments made by the United States in reliance on the information contained herein which thereafter is determined to be incorrect or untrue.

11. I hereby authorize my insurer to release any information to the United States regarding insurance coverage I have for this loss.

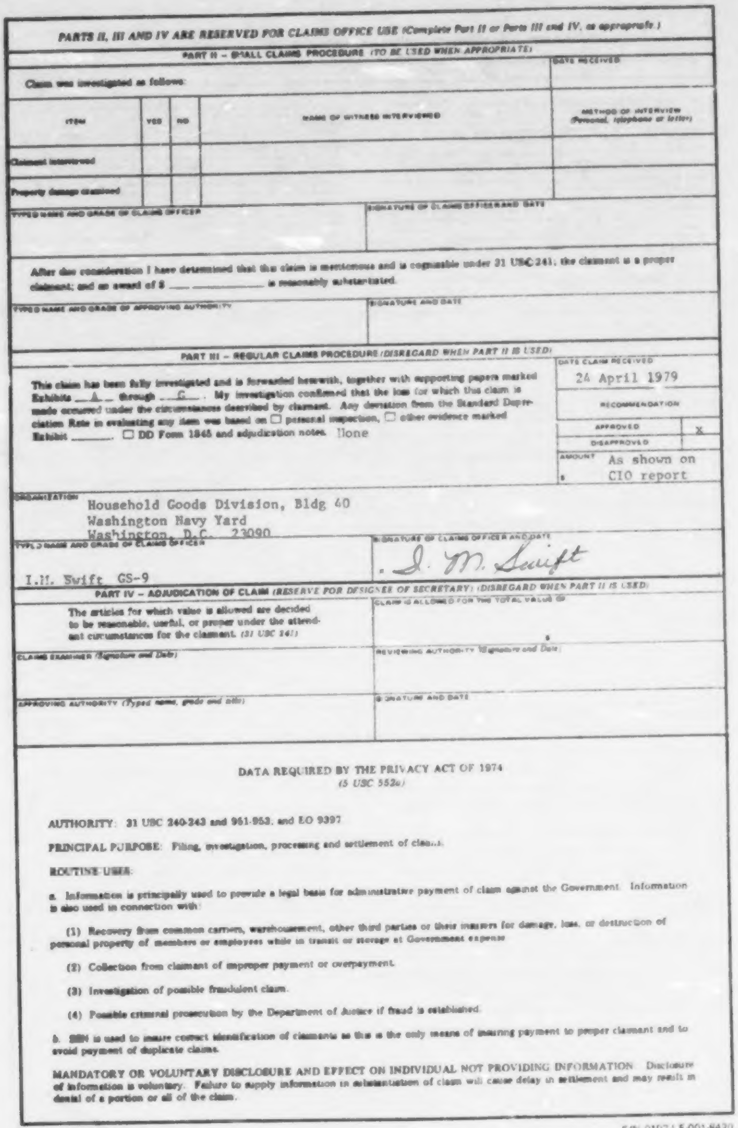
12. I have not made a previous claim against the United States for loss or damage now claimed.

SIGNATURE OF WITNESS AND DATE	SIGNATURE OF CLAIMANT (OR AGENT) AND DATE John P. Jones 20 April 1979

DD FORM 1 FEB 77 **1842**

EDITION OF 1 JAN 72 IS OBSOLETE. REPLACES DD FORM 1842 PRIVACY ACT STATEMENT, 26 SEP 75, WHICH IS OBSOLETE.

S/N 0102-LF-001-8420



PARTS II, III AND IV ARE RESERVED FOR CLAIMS OFFICE USE *(Complete Part II or Parts III and IV, as appropriate.)*

PART II – SMALL CLAIMS PROCEDURE *(TO BE USED WHEN APPROPRIATE)*

Claim was investigated as follows:

DATE RECEIVED

ITEM	YES	NO	NAME OF WITNESS INTERVIEWED	METHOD OF INTERVIEW (Personal, telephone or letter)
Claimant interviewed				
Property damage examined				

TYPED NAME AND GRADE OF CLAIMS OFFICER	SIGNATURE OF CLAIMS OFFICER AND DATE

After due consideration I have determined that this claim is meritorious and is cognizable under 31 USC 241; the claimant is a proper claimant; and an award of $ ___ __________ is reasonably substantiated.

TYPED NAME AND GRADE OF APPROVING AUTHORITY	SIGNATURE AND DATE

PART III – REGULAR CLAIMS PROCEDURE *(DISREGARD WHEN PART II IS USED)*

This claim has been fully investigated and is forwarded herewith, together with supporting papers marked Exhibits __A__ through __G__. My investigation confirmed that the loss for which this claim is made occurred under the circumstances described by claimant. Any deviation from the Standard Depreciation Rate in evaluating any item was based on ☐ personal inspection, ☐ other evidence marked Exhibit ______. ☐ DD Form 1845 and adjudication notes. None

DATE CLAIM RECEIVED 24 April 1979

RECOMMENDATION

APPROVED	X
DISAPPROVED	

AMOUNT $ As shown on CIO report

ORGANIZATION
Household Goods Division, Bldg 40
Washington Navy Yard
Washington, D.C. 23090

TYPED NAME AND GRADE OF CLAIMS OFFICER I.M. Swift GS-9	SIGNATURE OF CLAIMS OFFICER AND DATE I. M. Swift

PART IV – ADJUDICATION OF CLAIM *(RESERVE FOR DESIGNEE OF SECRETARY) (DISREGARD WHEN PART II IS USED)*

The articles for which value is allowed are decided to be reasonable, useful, or proper under the attendant circumstances for the claimant. *(31 USC 241)*	CLAIM IS ALLOWED FOR THE TOTAL VALUE OF $
CLAIMS EXAMINER *(Signature and Date)*	REVIEWING AUTHORITY *(Signature and Date)*
APPROVING AUTHORITY *(Typed name, grade and title)*	SIGNATURE AND DATE

DATA REQUIRED BY THE PRIVACY ACT OF 1974
(5 USC 552a)

AUTHORITY: 31 USC 240-243 and 951-953, and EO 9397

PRINCIPAL PURPOSE: Filing, investigation, processing and settlement of claims.

ROUTINE USES:

a. Information is principally used to provide a legal basis for administrative payment of claim against the Government. Information is also used in connection with:

(1) Recovery from common carriers, warehousemen, other third parties or their insurers for damage, loss, or destruction of personal property of members or employees while in transit or storage at Government expense.

(2) Collection from claimant of improper payment or overpayment.

(3) Investigation of possible fraudulent claim.

(4) Possible criminal prosecution by the Department of Justice if fraud is established.

b. SSN is used to insure correct identification of claimants as this is the only means of insuring payment to proper claimant and to avoid payment of duplicate claims.

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION: Disclosure of information is voluntary. Failure to supply information in substantiation of claim will cause delay in settlement and may result in denial of a portion or all of the claim.

S/N 0102-LF-001-8420

PARTS II, III AND IV RESERVED FOR CLAIMS OFFICE USE

(Complete Part II or Parts III and IV, as appropriate)

PART II - SMALL CLAIMS PROCEDURE *(To be used when appropriate)* Claim was investigated as follows: Exceptions taken at delivery on all items. Exceptions on DD619 compared with origin inventory. Replacement cost for refr. door verified with witness named below.	DATE RECEIVED 24 April 1972

ITEM	YES	NO	NAME OF WITNESS INTERVIEWED	METHOD OF INTERVIEW *(Personal, telephone or letter)*
Claimant Interviewed	X		Ronald Wrench Wrench Refrigeration, Inc.	Telephone 224-5072
Property Damage Examined		X		

After due consideration I have determined that this claim is meritorious and is cognizable under 31 U.S.C.241; the claimant is a proper claimant; and an award of $ ____________ is reasonably substantiated.

TYPED NAME AND GRADE OF APPROVING AUTHORITY	SIGNATURE

PART III - REGULAR CLAIMS PROCEDURE *(DISREGARD when part II is used)*	DATE RECEIVED
This claim has been fully investigated and is forwarded herewith, together with supporting papers marked Exhibits _____ through _____. My investigation confirmed that the loss for which this claim is made occurred under the circumstances described by claimant. Any deviation from the Standard Depreciation Rate in evaluating any item was based on ☐ personal inspection, ☐ other evidence marked Exhibit _____. ☐ DD Form 1845 and adjudication notes.	RECOMMENDATION ☐ APPROVED ☐ DISAPPROVED AMOUNT $

ORGANIZATION

TYPED NAME AND GRADE OF CLAIMS OFFICER	SIGNATURE OF CLAIMS OFFICER

PART IV - ADJUDICATION OF CLAIM *(Reserve for designee of Secretary)* *(DISREGARD when Part II is used)*

The articles for which value is allowed are decided to be reasonable, useful, or proper under the attendant circumstances for the claimant. *(31 U.S.C. 241)*	CLAIM IS ALLOWED FOR THE TOTAL VALUE OF: $
CLAIMS EXAMINER *(Signature and date)*	REVIEWING AUTHORITY *(Signature and date)*

APPROVING AUTHORITY *(Typed name, grade and title)*	SIGNATURE	DATE

SCHEDULE OF PROPERTY

(For use with DD Forms 1842 and 1843)

CLAIM OF

John P. Jones, LT, USN

Page 1 of 1 Pages

LINE NO.	INVENTORY NUMBER	QUANTITY	DESCRIPTION OF ARTICLE *(Include trade mark, brand name, model, year of manufacture and size)*	NATURE AND EXTENT OF DAMAGE *(Describe new damage in detail. If lost, indicate missing)*	WEIGHT *(Carton weight if packed)*	DATE OF PURCHASE OR ACQUISITION	PURCHASE PRICE OR ACQUISITION VALUE	AMOUNT CLAIMED		RESERVED FOR APPROVING AUTHORITY	
								SUBSTANTIATED REPLACEMENT COST	COST OF REPAIRS	AMOUNT ALLOWED	REMARKS
1	74	1	Lane walnut coffee table	Numerous rubs and scratches on top	50 lb	June 1970	$109.00		$40.00	$30.00	**
2	127	1	Bassett mahogany veneer headboard	Edge chipped, veneer loosened along edge	40 lb	June 1970	279.50		15.00	15.00	
3	134	1	Sears Coldspot Deluxe 15.1 cu ft refr/freezer, no icemaker	Hole in door	308 lb	Aug 1971	294.95		87.50	87.50	
4	246	10	Bath towels	Missing	Carton 40 lb	June 1970	32.00	$34.80		20.88	*
5	"	10	Face towels	"	"	June 1970	16.00	18.80		11.28	*
6	"	10	Wash cloths	"	"	June 1970	7.00	9.00		5.40	*
7	"	1	Bathroom scale, J.C. Penney	"	"	1968	6.95	8.99		4.50	*
8	"	1	Plastic shower curtain	"	"	July 1970	2.50	3.00		1.80	*
9	"	4	Bars bath size ivory soap (unopened)	"	"	1972	.60	.60		.60	
10	"	3	Sets queen size permanent press percale sheets	"	"	1970-1971	36.00	41.34		28.94	*
11	"	1	Rubber ducky	"	"	1971	.59	.59		.30	*
										$206.20	

* Normal Depreciation Taken.

** Reduced due to preexisting damage included in repair cost.

DD FORM 1 JAN 74 1845

REPLACES DA FORM 1089-1, WHICH IS OBSOLETE

(See section 2121c(2)(a))

FORMAT FOR NOTIFICATION OF REIMBURSEMENT FOR HOUSEHOLD GOODS

AIR MAIL SPEED LETTER

From: Claims Investigating Officer

To: Appropriate Command

Re: CLAIM FOR REIMBURSEMENT HOUSEHOLD GOODS

1. (FULL NAME OF CLAIMANT)
2. (GRADE)
3. (SERVICE NUMBER)
4. (DATE CLAIM FORWARDED TO ADJUDICATING AUTHORITY)
5. CLAIMANT HAS RETAINED (AMOUNT PAID) SETTLEMENT FROM CARRIER, CONTRACTOR OR INSURER. REQUEST DEDUCTION FROM GOVERNMENT SETTLEMENT OR CHECKAGE AS APPROPRIATE.

OR

5. ATTACHED CARRIER, CONTRACTOR OR INSURER SETTLEMENT CHECK ENDORSED TO THE JUDGE ADVOCATE GENERAL

OR

5. CLAIM WITH CARRIER, CONTRACTOR OR INSURER DENIED; CONSIDERED (JUSTIFIED/UNJUSTIFIED)

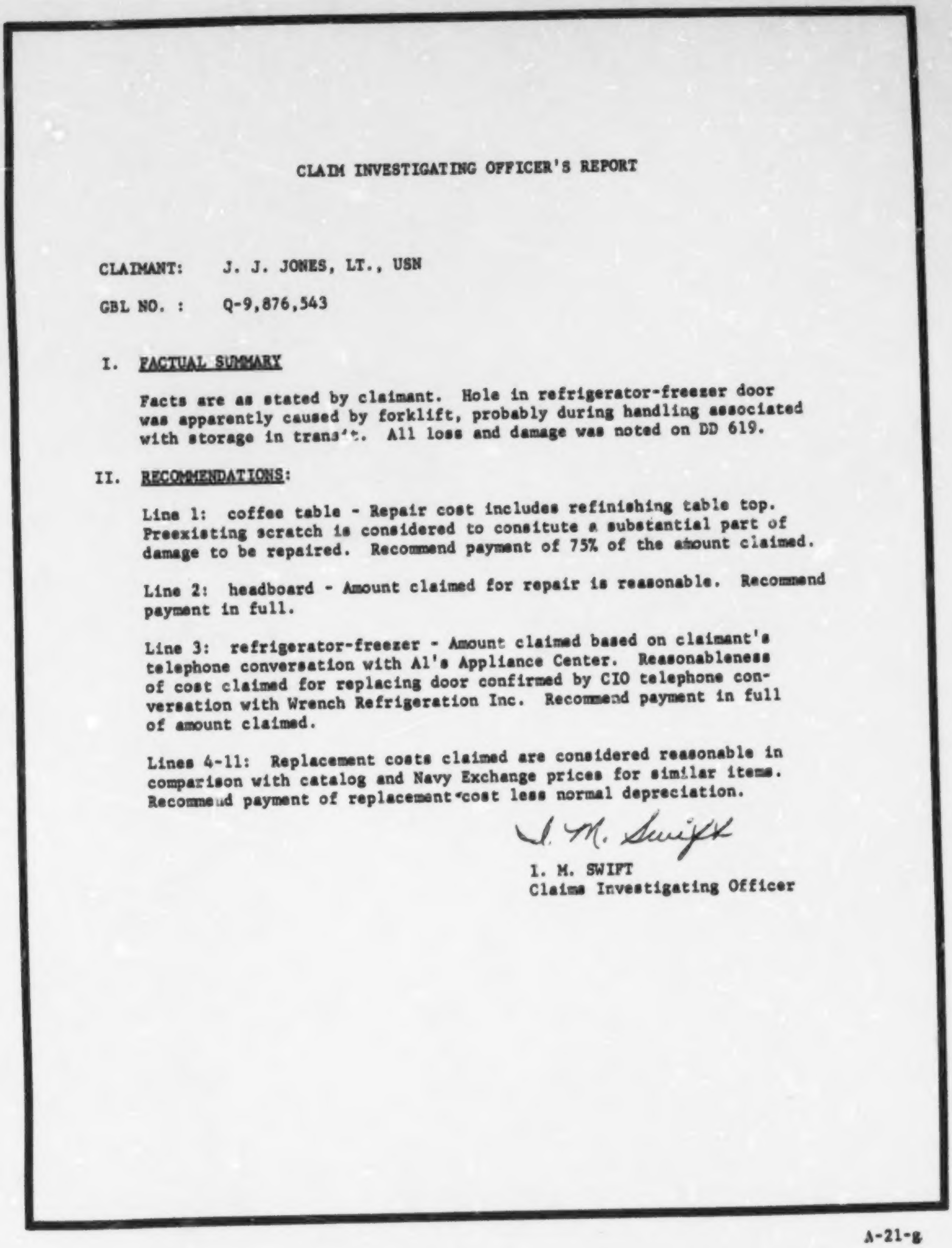
(See section 2121d)

CERTIFICATE OF DEMAND ON CARRIER, CONTRACTOR OR INSURER

____
(date)

I, the undersigned, hereby certify that on __________ (date) I made written demand on ____________________ (Carrier, contractor or insurer) for __________ (amount) in accordance with the terms and conditions of the bill of lading under which my household effects were shipped, or my contract of insurance. I certify that I have (have not) been reimbursed by the above carrier, contractor, or insurer in the amount of $__________ in settlement of my claim. If I have not been reimbursed by the above carrier, contractor, or insurer, I agree to notify the Claims Investigating Officer of any subsequent action, settlement, or denial made to me. A copy of my demand letter, together with a copy or original of all shipping documents and insurance policies, and all correspondence pertinent thereto are attached to this certificate. I have advised the carrier, contractor and/or insurer to address all future correspondence in regard to this claim to me, in care of the Claims Investigating Officer. I further agree that, if recovery is received from the carrier, contractor and/or insurer after my claim has been paid by the Government, I will pay the proceeds to the United States, or will submit to checkage of my pay account in an equivalent amount; such payment or checkage may not exceed the amount received by me from the United States.

____
(Signature of Claimant)



CLAIM INVESTIGATING OFFICER'S REPORT

CLAIMANT: J. J. JONES, LT., USN

GBL NO. : Q-9,876,543

I. FACTUAL SUMMARY

Facts are as stated by claimant. Hole in refrigerator-freezer door was apparently caused by forklift, probably during handling associated with storage in transit. All loss and damage was noted on DD 619.

II. RECOMMENDATIONS:

Line 1: coffee table - Repair cost includes refinishing table top. Preexisting scratch is considered to consitute a substantial part of damage to be repaired. Recommend payment of 75% of the amount claimed.

Line 2: headboard - Amount claimed for repair is reasonable. Recommend payment in full.

Line 3: refrigerator-freezer - Amount claimed based on claimant's telephone conversation with Al's Appliance Center. Reasonableness of cost claimed for replacing door confirmed by CIO telephone conversation with Wrench Refrigeration Inc. Recommend payment in full of amount claimed.

Lines 4-11: Replacement costs claimed are considered reasonable in comparison with catalog and Navy Exchange prices for similar items. Recommend payment of replacement cost less normal depreciation.

I. M. Swift

I. M. SWIFT
Claims Investigating Officer

CLAIM ANALYSIS CHART

Page 1 of 1 Pages

NAME OF CLAIMANT: J. P. Jones

NAME OF CARRIER/CONTRACTOR: Shore Van Lines

CLAIM NO.: 72-000

GBL NO.: Q 9,876,543

LOT NO.:

OTHER:

ORIGIN (Contractor's Name) & DATE OF INV.: Salty Transfer, agent for Shore Van Lines 6 March 1972

2D RECEIVER (Contractor's Name) & DATE OF INV.: J. P. Jones - owner 4 April 1972

LINE NO.	DAMAGE LOST ITEM (Describe in Detail, Give Model No. if Available)	ORIGIN INV. NO.	ORIGIN EXCEPTION	2D RECEIVER INV. NO.	2D RECEIVER EXCEPTION	DELIVERY EXCEPTIONS NOTED ON: DD FORM 619	ITO INSPECTION	DEL. INV.	CLAIMS OFFICE INSPECTION	OTHER	WT OF LINE ITEM	ESTIMATE OF REPAIR NEW DAMAGE	ORIG. COST / YEAR OF PURCH.	LIABILITY DATA: US PAID	WAREHOUSE	CARRIER
1	Lane Walnut Coffee Table	74	3" Scratch on top legs rubbed and scratched	74	numerous rubs and scratches on top	X					50#	claimed 40.00 recommend 30.00	109.00 1970			
2	Bassett mahogany veneer headboard	127	Rubbed on front	127	Edge chipped, veneer loosened along edge	X					40#	claimed 15.00 reasonable	279.50 set 1970			
3	Sears Coldspot Deluxe refrigerator-freezer 15.1 cu.ft. no icemaker	134	Chipped on front and sides	134	hole in door	X					308#	87.50 OK	294.95 1971			
													TOTAL			

COMMENTS

DD FORM 1 JAN 72 1844

A-21-h

LIST OF COMMANDS THAT HAVE RECEIVED FUNDING AUTHORITY AND ACCOUNTING DATA FROM THE JUDGE ADVOCATE GENERAL

The following is a list of commands (allottees) that have received funding authority and accounting data from the Judge Advocate General. There are personnel attached who have adjudicating authority and are capable of processing claims filed pursuant to 31 U.S.C. §§ 240-243 (see section 2124), or in the alternative, claims are adjudicated by personnel attached to another command, and in some instances adjudication is accomplished through a sub-allotment.

The commands listed in this appendix are grouped for simplicity by the dollar amount adjudicating authority of personnel. The listing contained in this appendix does not constitute adjudicating authority. Adjudicating authority by dollar amount is contained in section 2124a.

A. $25,000 AUTHORITIES

1. NAVLEGSVCOFF Philadelphia
2. NAVLEGSVCOFF Norfolk
3. NAVLEGSVCOFF Charleston
4. NAVLEGSVCOFF Great Lakes
5. NAVLEGSVCOFF San Diego
6. NAVLEGSVCOFF Treasure Island
7. NAVLEGSVCOFF Seattle
8. NAVLEGSVCOFF Pearl Harbor
9. NAVLEGSVCOFF Newport
10. NAVLEGSVCOFF Memphis
11. NAVLEGSVCOFF Corpus Christi
12. NAVLEGSVCOFF Washington
13. NAVLEGSVCOFF Pensacola
14. NAVLEGSVCOFF Jacksonville
15. NAVLEGSVCOFF Naples
16. NAVLEGSVCOFF Subic
17. NAVLEGSVCOFF Guam
18. NAVLEGSVCOFF Yokosuka
19. NAVLEGSVCOFF Long Beach
20. NSC Oakland

B. $10,000 AUTHORITIES

21. COMNAVFORCARIB Roosevelt Roads
22. COMNAVBASE Guantanamo Bay
23. NAVSTA Panama Canal

C. $5,000 AUTHORITIES

24. NAVLEGSVCOFFDET New London
25. NAVLEGSVCOFFDET Key West
26. NAVLEGSVCOFFDET Sigonella
27. NAVLEGSVCOFFDET Orlando
28. NAVLEGSVCOFFDET Whidbey Island
29. NAVLEGSVCOFFDET Lemoore
30. NAVLEGSVCOFFDET Rota
31. NAVLEGSVCOFFDET New Orleans
32. NAVLEGSVCOFFDET London
33. NSC Puget Sound

D. $1,000 AUTHORITIES

34. NSC Charleston
35. NAS Kingsville
36. NAS Chase Field, Beeville
37. NAS Pensacola
38. NAS Brunswick
39. NAS Meridian
40. NAS Bermuda
41. NAVSTA Keflavik
42. NAVSTA Mayport
43. NAVSTA Adak
44. NAF Sigonella
45. NAF Atsugi
46. NAF Midway
47. NAVFAC Argentina
48. COMFLEACT Okinawa
49. COMFLEACT Sasebo
50. ADMINSUPU Bahrain
51. NAVPGSCOL Monterey
52. CBC Gulfport
53. NAVAIRTESTCEN Patuxent River
54. NAVAIRENGCEN Lakehurst
55. NAVORDFAC Sasebo
56. NAVCOMMSTA Harold E. Holt
57. NAVSUPPO La Maddalena
58. NAVSECGRUACT Misawa
59. NAVWPNCEN China Lake
60. COMUSFORAZ Lages
61. NAVAL SHIPYARD Portsmouth

In addition to the foregoing, naval officers attached to the following commands have been designated $1,000 adjudicating authorities by name by the Judge Advocate General by separate correspondence in accordance with section 2124a(6). Some of the following commands hold an individual allotment from the Judge Advocate General, and others utilize a sub-allotment.

1. NSC Oakland
2. NSC Norfolk
3. NSC Pearl Harbor
4. NSC San Diego
5. NSD Guam
6. NAVSCSCOL Athens
7. NSD Subic Bay
8. NAS Jacksonville
9. NSD Yokosuka

(See section 2117b)

DD FORMS 1842 and 1845 -- PRIVACY ACT STATEMENT
(Claim for Personal Property Against the United States)

1. AUTHORITY: 31 U.S.C. §§ 240-243

2. PRINCIPAL PURPOSE(S): Information is obtained to support an individual's claim against the Government and is used principally in connection with the filing, investigation, review, processing, and settlement of the individual's claim and the Government's derivative claims against carriers, warehousemen, insurers, or other third parties.

3. ROUTINE USES: Information provided in the form may be furnished to carriers, warehousemen, insurers, or other third parties having responsibility in connection with the individual's loss; cognizant officials within the Department of the Navy and Defense; and the Department of Justice.

4. DISCLOSURE MANDATORY/VOLUNTARY, CONSEQUENCE OF REFUSAL TO DISCLOSE: Disclosure is volunatry, but failure to provide the information called for will proclude processing of the claim.

APPENDIX SECTION – 22

See section 2223

SETTLEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby agree(s) to accept the sum of ______________________________ ($____________) in full satisfaction and final settlement of any and all claims (I)(we) now have or may in the future have against the UNITED STATES OF AMERICA, or any of its agents or employees, arising out of__
____
____

(I)(We) agree that upon receipt of the aforesaid sum, the UNITED STATES OF AMERICA, and its agents and employees, shall be forever discharged from any and all claims, demands, damages, actions, causes of action, or suits of any nature or kind whatsoever arising out of the aforesaid matter.

IN WITNESS WHEREOF, the undersigned (have)(has) signed these presents this ________day of ____________, 19___.

____

WITNESS:

____

____

APPENDIX SECTION – 24

Excerpt from Federal Register of 9 Nov 1962. * (See section 2413)

Executive Order 11060

PRESCRIBING CERTAIN REGULATIONS AND DELEGATING TO THE ATTORNEY GENERAL CERTAIN AUTHORITY OF THE PRESIDENT TO PRESCRIBE OTHER REGULATIONS RELATING TO THE RECOVERY FROM TORTIOUSLY LIABLE THIRD PERSONS OF THE COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Under and by virtue of the authority vested in me by Title 3 of the United States Code and by Section 2(a) of the Act of September 25, 1962 (Public Law 87-693), it is hereby ordered as follows:

SECTION 1. The Director of the Bureau of the Budget shall, for the purposes of the Act of September 25, 1962, from time to time, determine and establish rates that represent the reasonable value of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

SEC. 2. Except as provided in Section 1 of this order, the Attorney General shall prescribe regulations to carry out the purposes of the Act of September 25, 1962.

JOHN F. KENNEDY

THE WHITE HOUSE
November 7, 1962.

* (See section 2405c)

DEPARTMENT OF JUSTICE ORDER
NO. 289-62 AS AMENDED

Title 28, Code of Federal Regulations, Part 43, reads as follows:

(Order No. 289-62)*

PART 43-RECOVERY OF COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Sec.
43.1 Administrative determination and assertion of claims.

43.2 Obligations of persons receiving care and treatment.

43.3 Settlement and waiver of claims.

43.4 Annual reports.

Authority: Sections 43.1 to 43.4 issued under sec. 2(a), 76 Stat. 593; E. O. 11060, Nov. 7, 1962, 27 F. R. 10925.

§ 43.1 Administrative determination and assertion of claims.

(a) The head of a Department or Agency of the United States responsible for the furnishing of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances), or his designee, shall determine whether such hospital, medical, surgical, or dental care and treatment was or will be furnished for an injury or disease caused under circumstances entitling the United States to recovery under the Act of September 25, 1962 (Public Law 87-693); and, if it is so determined, shall, subject to the provisions of section 43.3, assert a claim against such third person for the reasonable value of such care and treatment. The Department of Justice, or a Department or Agency responsible for the furnishing of such care and treatment, may request any other Department or Agency to investigate, determine, or assert a claim under the regulations in this part.

(b) Each Department or Agency is authorized to implement the regulations in this part to give full force and effect thereto.

(c) The provisions of the regulations in this part shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Veterans Administration to an eligible veteran for a service-connected disability under the provisions of chapter 17 of title 38 of the United States Code.

§ 43.2 Obligations of persons receiving care and treatment.

(a) In the discretion of the Department or Agency concerned, any person furnished care and treatment under circumstances in which the regulations in this part may be applicable, his guardian, personal representative, estate, dependents, or survivors may be required:

(1) To assign in writing to the United States his claim or cause of action against the third person to the extent of the reasonable value of the care and treat-

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*As amended by Order 344-65 of 14 June 1965 (30 F. R. 7819).

ment furnished or to be furnished, or any portion thereof;

(2) To furnish such information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment is being given and concerning any action instituted or to be instituted by or against a third person;

(3) To notify the Department or Agency concerned of a settlement with, or an offer of settlement from, a third person; and

(4) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(b) Records as to medical history, diagnosis findings, or treatment may be withheld pending compliance with the provision of this section.

§ 43.3 Settlement and waiver of claims.

(a) The head of the Department or Agency of the United States asserting such claim, or his designee, may (1) accept the full amount of a claim and execute a release therefor, (2) compromise or settle and execute a release of any claim, not in excess of $20,000, which the United States has for the reasonable value of such care or treatment, or (3) waive and in this connection release any claim, not in excess of $20,000 in whole or in part, either for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in section 43.1.

(b) Claims in excess of $20,000 may be compromised, settled, waived and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which (1) the claim of the United States for such care and treatment has been referred to the Department of Justice, or (2) a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described above and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving (1) unusual circumstances, (2) a new point of law which may serve as a precedent, or (3) a policy question where there is or may be a difference of views between any of such Departments and Agencies.
(Order No. 373-67, 32 F. R. 713, Jan. 21, 1967)

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from, third persons.

The regulations prescribed by this order shall become effective on January 1, 1963.

* (See section 2410 and A-24-a)

BUREAU OF THE BUDGET RATE SCHEDULES

COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Bureau of the Budget by section 1 of Executive Order No. 11060 of November 7, 1962, (27 F.R. 10925), the following rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations), and have been determined to represent the reasonable value of hospital, nursing home, medical, surgical or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals and nursing homes, with the exception of Freedmen's Hospital, Washington, D.C., and Canal Zone Government hospitals—

	Hospital Care Per Inpatient Day			Outpatient Medical and Dental Treatment	
Effective Date	Federal General & TB Hospitals	Federal Mental Hospitals	V.A. Nursing Home Units	Per facility visit	Federal Register Source
07/01/62 - 06/30/63	$36.00	$14.25		$7.00	28 F. R. 11516
07/01/63 - 10/21/63	37.00	14.75		8.00	28 F. R. 11516
10/22/63 - 06/30/64	39.00	14.75		8.00	28 F. R. 11516
07/01/64 - 08/31/64	40.00	15.00		8.00	28 F. R. 11516
09/01/64 - 12/31/65	42.00	15.50		8.50	28 F. R. 12482
01/01/66- 06/30/66	44.00	16.00	$16.50	9.00	30 F. R. 16220
07/01/66- 09/30/66	45.00	16.50	16.50	9.00	30 F. R. 16220
10/01/66 - 06/30/68	45.00	17.00	17.50	9.00	31 F. R. 10754

Effective Date	Hospital Care Per Inpatient Day: Federal General & TB Hospitals	Hospital Care Per Inpatient Day: Federal Mental Hospitals	Hospital Care Per Inpatient Day: V.A. Nursing Home Units	Outpatient Medical and Dental Treatment: Per Facility Visit	Federal Register Source
7/1/68 - 8/31/69	$49.00	$19.00	$16.00	$10.00	33 F.R. 6943 & 33 F.R. 7048
9/1/69 - 6/30/70	53.00	24.00	18.00	11.00	34 F.R. 14252
7/1/70 - 6/30/71	58.00	25.00	19.00	12.00	35 F.R. 10531
7/1/71 - 6/30/73	61.00	27.00	20.00	13.00	36 F.R. 11327
	DOD General Hospitals			DOD Outpatient Treatment Per Visit	
* 7/1/73 - 6/30/74	126.00	47.00	31.00	16.00	38 F.R. 22444
7/1/74 - 6/30/75	133.00	60.00	36.00	16.00	39 F.R. 20651
7/1/75 - 6/30/76	147.00	58.00	40.00	19.00	40 F.R. 24254
7/1/76 - 10/5/77	168.00	68.00	53.00	20.00	41 F.R. 26757
10/6/77 - 5/30/79	206.00	84.00	60.00	20.00	42 F.R. 54480
6/1/79 - 3/31/80	226.00	98.00	66.00	23.00	44 F.R. 32490
4/1/80 - 5/10/81	254.00	110.00	74.00	26.00	45 F.R. 24293
5/11/81 and thereafter	336.00	141.00	98.00	33.00	46 F.R. 25738

	DOD	VA	HRS
INPATIENT	$336.00	$245.00	$224.00
IN PANAMA	$397.00		
PSYCHIATRIC CARE		$154.00	
BROOKE BURN CENTER	$1,010.00		
OUTPATIENT	$33.00	$54.00	$44.00
IN PANAMA	$44.00		

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be the amounts expended by the United States for such care and treatment;

(c) For such care and treatment at Canal Zone Government hospitals, the rates shall be those established, and in effect at the time the care and treatment is furnished, by the Canal Zone Government for such care and treatment furnished to beneficiaries of other U.S. Government agencies.

HOSPITAL AND MEDICAL CARE
3RD PARTY LIABILITY CASE
NAVJAG 5890/12 (Rev. 3-78) S/N 0105-LF-105-8960

RCS JAG 5890-1

TO: Officer in Charge, Naval Legal Service Office	DATE: 1 March 1980
FROM: Commanding Officer, U.S. Naval Hospital	Submission: ☐ Initial ☐ Interim ☒ Final
1. Patient Data (Include Name, Grade, Component, Organization and Station, Home Address, Branch of Service (i.e. Army, Navy, Air Force), Status (i.e. EAD, Retired, Inactive duty for training, etc.), Date of Admission) SEAMAN, Average FN USN 111-11-1111 USS BUCKET (CVA-1) 1415 Main Street Anytown, U.S.A. Active Duty ADMITTED THIS FACILITY: 1 January 1980	2. Diagnosis (Use Standard Nomenclature) Fracture, left femur

3. Prognosis (Include expected length of hospitalization or number of outpatient visits expected)

Expected length of hospitalization completed. No outpatient treatment expected.

4. Cause of Injury (Append statement of patient or accident report if available)

Automobile accident in Anytown, U.S.A. on 1 January 1980. Home command conducted line of duty/misconduct investigation.

5. Agency Sponsoring Patient Navy	6. Disposition Release to duty	7. Date of Disposition 15 February 1980

8. STATEMENT OF CHARGES

	This Facility (a)	Prev. Reports This Case (b)	Total To Date (c)	Unit Charges Per OMB (d)	Total Charges (e)
INPATIENT - NUMBER OF DAYS	30	15	45	$206.00	$ 9,270.00
OUTPATIENT - NUMBER OF TREATMENTS	1	0	1	20.00	$ 20.00
				GRAND TOTAL	$ 9,290.00

9. Signature (Patient Records Officer)

J.J. Doc, LT, MSC, USN

(Continue items 2, 3, and 4 on separate sheet if necessary)

PRIVACY ACT STATEMENT

1. AUTHORITY: 42 U.S.C. Sections 2651 - 2653; 31 U.S.C. Sections 951 - 953; Executive Order 16068

2. PRINCIPAL PURPOSE(S): To provide information for the collection of claims by the United States against third-party tortfeasors under the Medical Care Recovery Act and the Federal Claims Collection Act.

3. ROUTINE USES: Information furnished by individuals receiving treatment at Government expense for injuries caused by third-party tortfeasors is used by the Navy for the pursuit by the Navy of claims against third-party tortfeasors under the Medical Care Recovery Act and the Federal Claims Collection Act; for the preparation of litigation reports to the Department of Justice; and for use in civil litigation by the Department of Justice.

4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSAL TO DISCLOSE: The disclosure is voluntary. If the individual does not provide the requested information, the Navy may require a written assignment of the patient's medical care claim.

HOSPITAL AND MEDICAL CARE
3RD PARTY LIABILITY CASE,
SUPPLEMENTAL STATEMENT
NAVJAG 5890/12 (Rev. 3-78)(Back)

DATE: 1 March 1980

TO: Officer in Charge, Naval Legal Service Office

FROM: NAVAL HOSPITAL, EVERFLOAT

Patient's Name	Rank/Rate	Social Security No.	Status
SEAMAN, Average	FN	111-11-1111	Discharged

PART I - PERIODS OF LEAVE, WEEKEND LIBERTY AND SUBSISTING OUT

Leave

FROM	TO	TYPE	NO. OF DAYS
8 February 1980	10 February 1980	Annual	2

Weekend Liberties

NO. OF LIBERTIES	NO. DAYS IN LIBERTY PERIOD	TOTAL DAYS
1	2	2
	TOTAL	4

Subsisting Out (Officers Only)

FROM	TO	NO. OF DAYS
	TOTAL	
	GRAND TOTAL	

PART II - PATIENT CLASSIFICATIONS (ENLISTED ONLY)*

CLASS	FROM	TO
V	1 January 1980	10 January 1980
IV	11 January 1980	25 January 1980
III	26 January 1980	31 January 1980
II	1 February 1980	7 February 1980
I	8 February 1980	15 February 1980

* CLASS I	AMBULANT	NO LIMITATIONS ON PHYSICAL CAPACITY.
CLASS II	AMBULANT	PHYSICAL ACTIVITY MODERATELY LIMITED.
CLASS III	AMBULANT	CONFINED TO WARD EXCEPT TO GO TO SPECIFIC HOSPITAL AREAS.
CLASS IV	BED PATIENT	BED PATIENT WITH HEAD PRIVILEGES.
CLASS V	BED PATIENT	STRICT BED PATIENT.

PART III - EVALUATION OF MEDICAL TREATMENT

1. If this patient had been in a civilian hospital rather than a military establishment:
   A. Date that necessary inpatient treatment was essentially completed: 1 February 1980
   B. The number of outpatient treatments which would have been required had subject been discharged on the above date: 5

2. Prognosis for permanent injury and permanent disability in this case:

None

I.M. Doktor, LCDR, MC, USN
Attending Physician's Signature
(Applicable to Part III Only)

STANDARD FORM 96
(ED. 11-1-62)

DEPARTMENT OF JUSTICE
28 CFR 43.1-43.4

* (See sections 2405a and 2407)

NOTICE OF CLAIM

TO: Mr. John Tortfeasor
1414 Main Street
Anytown, U. S. A.

Take notice that, pursuant to 76 Stat. 593, 42 United States Code, §§ 2651-2653, the United States of America is entitled to recover, and does hereby make claim for, the reasonable value of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished

FN Average Seaman, USN

in connection with injuries sustained or disease suffered on 1 January 1969 under circumstances indicating your legal liability to pay damages therefor.

You should immediately send the enclosed copy of this notice to your insurance company.

Inquiries concerning this claim should be addressed to:

Litigation and Claims Division
Office of the Judge Advocate General
Department of the Navy
Washington, D. C. 20370

(RESERVED)

(See section 2419)

DEPARTMENT OF THE NAVY
PROMISSORY NOTE CONTAINING AGREEMENT FOR JUDGMENT

$____________________ __________________, 19_____

For value received, I (we jointly and severally) promise to pay to the order of the Treasurer of the United States the sum of _____Dollars, with interest at the rate of ______ per annum, in monthly installments of not less than______________ dollars each, payable at ____________________________on or before the first day of each calendar month until such obligation is fully paid. If any such instaliment shall remain unpaid for a period of ten days, the entire amount of this obligation, with interest, less payments actually made, shall thereupon become immediately due and payable at the option of the United States Attorney for the District of ________ ______________without demand or notice, said demand and notice being hereby expressly waived.

I (we) do hereby authorize and empower the said United States Attorney, any of his assistants, or any attorney of any court of record, State or Federal, to appear for me (us) and to enter and confess judgment against me (us) for the entire amount of this obligation, with interest, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court or record, Federal or State; to waive the issuance and service of process upon me (us) in any suit on this obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering up such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

I (we) hereby ratify and confirm all that said attorney may do by virtue hereof.

____

____

(See section 2420)

From: Commandant of the Marine Corps
To: Judge Advocate General

Subj: Property damage claims in favor of the United States
(Report Control JAG 5890-3)

Ref: (a) JAG Manual, section 2420

1. In compliance with reference (a), the following report of property damage claims in favor of the United States processed in the Second Naval District is submitted for the quarter ending on 31 March 1969:

a.	Total claims asserted	11
b.	Number of recoveries	5
c.	Dollar amount of asserted claim	$1,583.17
d.	Dollar amount of recoveries	$1,001.15
e.	Total amount of active claims on file end of quarter	5

A. F. Lawler
A. F. LAWLER
By direction

APPENDIX SECTION – 25

NOTARIAL FORMATS (See Chapter XXV)

The following contains formats for acknowledgments and for sworn instruments as well as general instructions for their accomplishment. These formats are legally sufficient in most jurisdictions, and by following the special instructions which are listed alphabetically in section 2510 by jurisdiction, they can be made legally sufficient in any specific jurisdiction. Although these formats may contain more facts than are required under the laws of a particular jurisdiction, the surplusage does not affect the validity of the acknowledgment.

SUGGESTED FORMAT FOR SIGNATURE BLOCK, WITNESSES, AND ACKNOWLEDGMENT CERTIFICATE

WITNESS the following signature and seal this__________day of__________, 19____.

(Signature of person whose
acknowledgment is to be taken) (SEAL)

Signed, sealed, and delivered in
the presence of:

(Signature of Witness)
(Name, Grade, Branch of Service, AFSN,
and Permanent Home Address)

(Signature of Witness)
(Name, Grade, Branch of Service, AFSN,
and Permanent Home Address)

(Signature of Witness)
(Name, Grade, Branch of Service, AFSN,
and Permanent Home Address)

With the United States Armed Forces
At (location*)

I,________________________, the undersigned officer, do hereby certify that on this_______day of __________, 19_____, before me, personally appeared (name of person whose signature is being acknowledged), (Armed Forces Service Number) whose home address is___________________________, and who is known to me to be (status**), and to be the identical person who is described in, whose name is subscribed to, and who signed and executed the foregoing instrument, and having first made known to him the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and same is executed in my capacity as (official capacity***).

(signature of officer)

(name of officer)

(AFSN, grade, and branch of service)

(command or organization)

(permanent home address)

*Insert Country, State, and County in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U. S. outside of the continental U. S."

**"U. S. Armed Forces member on active duty," or "the spouse of a U. S. Armed Force member," or "a person serving with the U. S. Armed Forces," or other appropriate description of status.

***"a commissioned officer under statutory authority granted to me" (State authority), or "Commanding Officer, U. S. Naval Station,__________________, under statutory authority granted to me" (State authority), or "a judge advocate under authority granted to me by Art. 136, UCMJ; 10 USC 936" (Federal authority), or "a lieutenant commander of the U. S. Navy on active duty under authority granted to me by Art. 136 UCMJ (10 USC 936) and the Manual of the Judge Advocate General, sections 2502 and 2503" (Federal authority).

SUGGESTED FORMAT FOR A SWORN INSTRUMENT

Venue

With the United States Armed Forces
At________(location*)________

Body

(This part of the instrument contains the substance of the affidavit, deposition, or other sworn statement.)

Jurat

I,______________________________, the undersigned officer, do hereby certify that the foregoing instrument was subscribed and sworn to before me this______day of_________, 19_______, by (name of person making statement), (Armed Forces service number), whose permanent home address is______________________________, and who is known to me to be (Status**). And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and same is executed in my capacity as (official capacity***).

(signature of officer)

(name of officer)

(AFSN, grade, and branch of service)

(command or organization)

(permanent home address)

---

*Insert Country, State, and County in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U. S. outside of the continental U. S."

**"U. S. Armed Forces member on active duty," or "the spouse of a U. S. Armed Force member," or "a person serving with the U. S. Armed Forces," or other appropriate description of status.

***"a commissioned officer under statutory authority granted to me" (State authority), or "Commanding Officer, U. S. Naval Station,_______________, under statutory authority granted to me" (State authority), or "a judge advocate under authority granted to me by Art. 136, UCMJ; 10 USC 936" (Federal authority), or "a lieutenant commander of the U. S. Navy on active duty under authority granted to me by Art. 136 UCMJ (10 USC 936) and the Manual of the Judge Advocate General, sections 2502 and 2503" (Federal authority).

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1 July 1978

JAG INSTRUCTION 5800.7B

From: Judge Advocate General
To: All Ships and Stations

Subj: Manual of the Judge Advocate General

Ref: (a) 5 U.S.C. § 301 (Authority to issue Departmental Regulations)
(b) 10 U.S.C. §§ 801-940 (Uniform Code of Military Justice)
(c) Manual for Courts-Martial, United States, 1969 (Revised edition)

Encl: (1) Summary of Changes and Editorial Corrections included in this Revision

1. Purpose. To promulgate the Manual of the Judge Advocate General.

2. Cancellation. JAG Instruction 5800.7A of 1 October 1970 is hereby cancelled.

3. Scope. This Manual contains regulations for the Department of the Navy that are authorized by references (a), (b), (c), and other statutes and regulations. The principal changes and corrections to the previous Manual of the Judge Advocate General are enumerated in enclosure (1).

4. Action. This Manual is effective as of the date of this instruction.

5. Distribution. Administrative requests by Navy commands for additional copies of the Manual of the Judge Advocate General should be directed to the Navy Department, Office of the Judge Advocate General (Code 72), Washington, DC 20370. Marine Corps activities will receive copies of the Manual of the Judge Advocate General in accordance with allowances established under Distribution Code "FE" of their Individual Activity T/A for Directives and Publications. Individual copies can be purchased directly from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

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JAG INSTRUCTION 5800.7B CHANGE TRANSMITTAL 1

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(2) List of Effective Pages (after insertion of Change 1)
(3) List of Amendments included in Change 1

1. Purpose. To transmit Change 1 to subject Manual.

2. Action. Insert the new pages which constitute enclosure (1), and remove the pages superseded thereby.

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JAG INSTRUCTION 5800.7B CHANGE TRANSMITTAL 2

From: Judge Advocate General
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Subj: Manual of the Judge Advocate General

Ref: (a) JAG Instruction 5822.2 of 2 Feb 1962, Subj: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings

Encl: (1) Revised pages v, vi, vii, viii, ix, x, xi, xii, 1-1, 1-2, 1-3, 1-4, 1-4a, 1-7, 1-7a, 1-8, 1-9, 1-10, 1-10a, 1-10-b, 1-11, 1-12, 1-15, 1-16, 1-19, 1-20, 1-21, 1-21a, 1-21b, 1-21c, 1-22, 1-23, 1-23a, 1-24, 1-25, 1-25a, 1-26, 1-27, 1-28, 1-29, 1-29a, 1-30, 1-31, 1-32, 1-33, 1-34, 1-35, 1-36, 1-37, 1-38, 1-39, 1-40, 1-41, 1-42, 1-42a, 1-43, 1-44, 1-45, 1-46, 1-47, 1-48, 1-55, 1-56, 1-56a, 1-57, 1-58, 1-59, 1-60, 1-61, 2-7, 2-8, 2-9, 2-10, 8-9, 8-10, 8-11, 8-12, 9-15, 9-16, 13-1, 13-2, 13-3, 13-4, 13-5, 13-6, 13-7, 13-7a, 13-8, 13-9, 13-10, 13-13, 13-13a, 13-14, 15-1, 15-2, 15-2a, 15-3, 15-4, 18-1, 18-2, 18-3, 18-4, 18-4a, 18-5, 18-6, 18-7, 18-8, 18-9, 18-10, 18-11, 18-12, 20-9, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21, 20-22, 20-23, 20-23a, 20-24, 20-25, 20-26, 20-27, 20-28, 20-29, 20-30, 20-31, 20-32, 21-1, 21-2, 21-3, 21-3a, 21-4, 21-15, 21-16, 21-17, 21-18, 21-19, 21-19a, 21-20, 22-3, 22-4, 22-5, 22-6, 22-7, 22-8, 23-3, 24-5, 24-6, 24-11, 24-12, 24-13, 24-13a, 24-14, 24-15, 24-15a, 24-16, 24-17, 24-18, 24-19, 25-1, 25-2, A-1-d(1), A-1-d(2), A-1-d(3), A-1-d(4), A-1-d(5), A-1-d(6), A-1-i(11), A-1-i(12), A-1-i(13), A-1-j(1), A-1-j(2), A-1-j(3), A-1-j(4), A-1-k(1), A-1-k(2), A-1-n(1), A-1-n(2), A-8-f(1), A-8-f(2), A-8-g, A-13-c, A-18-a, A-20-a(1), A-20-a(2), A-20-b, A-20-c, A-20-d, A-20-e(1), A-20-e(2), A-20-f(1), A-20-f(2), A-21-i, A-22-a, A-24-c(1), A-24-c(2), A-24-f, Index-1, Index-2,

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1. Purpose. To transmit Change 2 to subject Manual.

2. Cancellation. Reference (a) is hereby cancelled, its contents having been incorporated into Change 2.

3. Action. Insert new pages which constitute enclosure (1), and remove the pages superseded thereby.

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SUMMARY OF CHANGES AND EDITORIAL CORRECTIONS INCLUDED IN THIS REVISION

1.	§ 0101b(4)	This change clarifies the language concerning the award of correctional custody as nonjudicial punishment to persons in pay grade E-4 and above.
2.	§ 0101b(5)	This change clarifies the language concerning the award of confinement on bread and water or diminished rations as nonjudicial punishment to persons in pay grade E-4 and above.
3.	§ 0101b(7)	This change clarifies the policy that reduction in grade as nonjudicial punishment is limited to one pay grade.
4.	§ 0101c	This change expands and clarifies the authority of commanding officers and officers in charge and officers and noncommissioned/petty officers to use nonpunitive measures to further command efficiency.
5.	§ 0101d(2)	This change permits commanding officers to close nonjudicial punishment hearings to the public when military exigencies so dictate.
6.	§ 0101e(2)	This change, which was promulgated as an interim change by ALNAV 054/82, provides for a stay of the nonjudicial punishments of restraint and extra duties by the officer acting upon an appeal or his delegee, when the accused so requests. It also establishes for nonjudicially imposed punishment the same policy as established for judicially imposed punishment, *viz.*, that the execution of subsequently imposed punishments will interrupt the execution of previously imposed punishments. It further permits officers imposing the nonjudicial punishments of correctional custody and confinement on bread and water or diminished rations to defer their execution when adequate facilities are not available or when the accused is medically unfit to serve them.
7.	§ 0101f(9)	This change provides for the authorization of a rehearing by an officer who acts upon an appeal from nonjudicial punishment.

8.	§ 0101k	This change incorporates the language of ALNAV 085/81 which in part clarified the authority to publish results of nonjudicial punishment hearings.
9.	§ 0102b	This change permits enlisted personnel to submit statements in reply to punitive letters of censure.
10.	§ 0103a(2)	This technical change adds five commands and deletes disestablished commands from the list of general court-martial convening authorities.
11.	§ 0103a(4)	This technical change incorporates Secretarial policy which permits "frocked" rear admirals and brigadier generals in command to convene general courts-martial.
12.	§ 0107e(3)	This change delegates certain functions, previously performed by the Secretary of the Navy, to the Judge Advocate General.
13.	§ 0107f(2) and § 0140a	These changes reflect the cancellation of SECNAVINST 5511.4 series.
14.	§ 0107g(1), § 0107g(2), and § 0107g(4)	This change, which was promulgated in ALNAV 143/81, reiterates procedures for determining whether military or Federal civilian authorities will exercise jurisdiction over criminal offenses committed by military personnel, as well as ensuring that actions taken by military authorities will not jeopardize the exercise of jurisdiction by Federal civil authorities.
15.	§ 0109	This change restates the rule that trial guides are not mandatory and deletes a reference to an obsolete publication.
16.	§ 0110A	This change, promulgated as an advance change by ALNAV 011/82, contains regulations to implement the provisions of the Military Justice Amendments of 1981, Pub. L. No. 97-81, 95 Stat. 1085, pertaining to representation by individual military counsel.
17.	§ 0112 and § 0114b	These changes, promulgated as an advance change by ALNAV 143/81, implement DOD Directive 1355.1 of 21 July 1981, which requires that proposed grants of immunity in court-martial cases involving

		national security be forwarded to the General Counsel of DoD for purposes of consultation with the Department of Justice.
18.	§ 0117	This change conforms this section to the change to the Manual for Courts-Martial effected by Executive Order 12315 of 29 July 1981. It additionally provides that periods of unauthorized absence which toll the 2-year limitation on evidence of prior nonjudicial punishment may be proved by the personnel records of the accused.
19.	§ 0118	This change promulgates the regulation prescribed by the Secretary of the Navy pursuant to article 58a(a), UCMJ, for automatic reduction to the lowest enlisted pay grade.
20.	§ 0120d	This change adds a requirement that a copy of the summary court-martial record of trial be served on the accused.
21.	§ 0120e; § 0121; § 0124; § 0125; § 0127; § 0133; § 0134; § 0135; § 0137, and § 0143	These changes are made to reflect the recently modified names of the U.S. Navy-Marine Corps Court of Military Review, the Navy-Marine Corps Appellate Review Activity, and the Navy-Marine Corps Trial Judiciary.
22.	§ 0124a(4)	This change permits a Navy legalman or equivalent Marine Corps legal occupational specialist in pay grade E-6 and above to certify promulgation orders and deletes sexist language.
23.	§ 0122b § 0124a(5)(c) § 0136c(1) and § 0136c(2)	These technical changes correct addresses.
24.	§ 0125a(3)	This change incorporates the language of ALNAV 085/81, which in part eliminated the requirement to send a summary or special court-martial not involving a bad conduct discharge to a supervisory authority for review when the convening authority exercises general court-martial jurisdiction.
25.	§ 0131a and § 0131b	This change indicates that probationers have no right to representation by individual military counsel at vacation hearings.

26.	§ 0133a and § 0133d	This change is made to conform to the present practice of providing copies of NMCMR decisions to the military judge, trial counsel and defense counsel, as a matter of courtesy, from the promulgation packet sent to GCM authority.
27.	§ 0133d(3) and § 0133d(4)	This change, promulgated as an advance change by ALNAV 011/82, contains the changes to the UCMJ effected by the Military Justice Amendments of 1981, Pub. L. No. 97-81, 95 Stat. 1085, which extend the period for an accused to petition the U.S. Court of Military Appeals to 60 days and authorize the "constructive service" of a decision of the Court of Military Review upon an accused.
28.	§ 0134a	This change, promulgated as an advance change in ALNAV 011/82, reflects the increase from 30 days to 60 days for the time within which an accused may petition the U.S. Court of Military Appeals for a grant of review of the decision of the Navy-Marine Corps Court of Military Review.
29.	§ 0137a(1)	This change discusses funding arrangements for the travel of military judges.
30.	§ 0138i(2)	This change discusses witness fees for Government employees.
31.	§ 0138k	This change deletes a reference to a disestablished command and substitutes the successor command.
32.	§ 0144	This change incorporates into the procedures for submission of petitions for review under article 69, UCMJ, the change thereto effected by the Military Justice Admendments of 1981, Pub. L. No. 97-81, 95 Stat. 1085, limiting consideration to those petitions filed within two years, and requires applicants for relief under article 69, UCMJ, to include the sentence adjudged in their application.
33.	§ 0148	This change incorporates the advance change promulgated by ALNAV 086/80 concerning the implementation by the Secretary of the Navy of additional requirements or limitations with regard to certain of the Military Rules of Evidence.
34.	§ 0155	This change promulgates the submission procedures for applications for relief pursuant to article 74(b), UCMJ.

35.	§ 0211	This change adds a requirement for special routing via the Naval Inspector General of records or reports of death investigations conducted pursuant to this Manual in which the adequacy of medical care is reasonably in issue, and corrects the OPNAV instruction number for U.S. Postal Instructions.
36.	§ 0814	This change deletes references to Standard Form 91A which has been cancelled.
37.	§ 0815a(3) and § 0817a	These changes correct clerical errors.
38.	§ 0913e and § 0913f(2)	These changes correct clerical errors.
39.	§ 1301 and § 1306a	These changes add a provision for consultation with a judge advocate when personnel are delivered to civilian authorities upon presentation of a warrant.
40.	§ 1304	This change deletes a cross-reference to section 1308.
41.	§ 1308	This change deletes the requirement for approval by the Secretary of the Navy (Judge Advocate General) as a prerequisite to delivery of personnel to civil authorities when disciplinary action is pending and substitutes therefor a recommendation for guidance from a judge advocate.
42.	§ 1309	This change deletes this section in its entirety.
43.	§ 1310	This change provides for notification to the Judge Advocate General before, vice after, the fact when refusal to deliver personnel to civil authorities is intended.
44.	§ 1315d	This change deletes reference to the former requirement to report delivery of personnel to civil authorities.
45.	§ 1316	This change adds a new section to provide guidance to commands seeking to obtain temporary custody of naval personnel, incarcerated by civil authorities, to permit trial by court-martial.

46.	§ 1320c	This change deletes a reference to JAGINST 5822.2 and explains the procedure for command notification to the Judge Advocate General and for individual requests for Department of Justice representation when personnel are served with process arising from actions performed in the course of official duties.
47.	§ 1320e	This change adds a provision for permissive orders to persons served with process in certain circumstances and confirms that they may accept fees and mileage tendered.
48.	§ 1330a	This change modifies the section's provisions relating to access to official records absent a court order for their production by permitting one or more parties in interest, vice all interested parties, to obtain a copy. It also adds a provision concerning release of classified information to civil courts.
49.	§ 1330b	This change adds an amplifying note concerning the production of documents in cases involving senior officials of the Department of the Navy.
50.	§ 1330c	This change clarifies language concerning personal information and privacy rights in records and it provides for notification when the request involves matter related to claims in favor of the Government.
51.	§ 1330d	This change clarifies ambiguous language.
52.	§ 1331b	This change adds a denial authority for initial requests for release of records and permits their release by certain custodians.
53.	§ 1331b(1)	This change directs that requests for release of JAG Manual investigations be forwarded to the Assistant Judge Advocate General (Military Law) for determination.
54.	§ 1331b(1) Exception	This change deletes this subsection and adds a new subsection 1331c which permits the release of certain information held by local activities.
55.	§ 1501; § 1502; § 1503; § 1504; § 1505; § 1506; § 1507; § 1508;	These changes to Chapter XV contain the redraft of the entirety of the chapter pertaining to trustee appointments by the Secretary of the Navy pursuant to 37 U.S.C. §§ 601-04 (1976). The

	§ 1509; § 1510; § 1511	redraft deletes matters which are pertinent only to the internal administration of the function within the Office of the Judge Advocate General.
56.	§ 1801a	This change reflects a change in the language of the customs duty statute concerning unaccompanied articles from insular possessions of the United States.
57.	PART B of Chapter XVIII	This partial title change reflects new statutory language.
58.	§ 1803a(2)	This change indicates an increased dollar amount for the customs exemption for returning residents.
59.	§ 1803b	This change adds a new sentence to indicate the extent of the customs exemption when a returning resident has claimed an exemption within the preceding thirty days.
60.	§ 1805a	This change extends the scope of the customs exemption to articles not accompanying a resident but which were purchased in American Samoa, Guam, or the Virgin Islands of the United States.
61.	§ 1805b	This change reflects the increased value limitations on articles brought into the United States.
62.	§ 1805c(1) and § 1805c(2)	These changes reflect conversion to the metric standards of measurement contained in §§ 202(a)(7) and (8) of Pub. L. No. 95-410.
63.	§ 1805d	This change reflects a new quantity limitation on cigarettes brought into the country.
64.	§ 1805e	This change reflects new flat-duty rates for articles brought into the country in excess of the customs exemption.
65.	§ 1806	This change discusses family grouping of the flat-duty-rate exemption.
66.	§ 1809b	This change reflects the extension of the limitation on gift exemptions to cigarettes in addition to alcoholic beverages and cigars.
67.	§ 1809c(1) and § 1809c(2)	These changes reflect an increase in the amount of duty-free cigars allowed to a nonresident for personal use and a conversion to the metric standards of measurement.

68.	§ 1809d	This change indicates that the new flat-duty-rate exemption applies to nonresidents as well as residents.
69.	§ 1820b	This change increases the limitations on gifts sent from foreign countries based on fair retail value in the country of shipment.
70.	§ 1820c	This change increases the dollar value on perfume containing alcohol which may be given duty free as a gfft.
71.	§ 1828	This change corrects a minor clerical error and indicates the correct metric equivalency for one pound.
72.	§ 1830e	This change inserts an exemption to the restriction on importation of trademarked articles.
73.	§ 1832	This section has been changed to make general, vice specific, reference to certain importation regulations subject to change by the Treasury Department.
74.	§ 1836 and § 1837	These changes have been made to conform the format of the section with the remainder of the chapter.
75.	§ 1838	This change reflects the redesignation of former § 1838 as § 1837.
76.	§ 2008 and and § 2016e(1)	These changes reflect the new title of the commanding officers of naval legal service offices.
77.	§ 2012b	This change corrects the current address of the Office of the Judge Advocate General.
78.	§ 2013b	This change adds a reference to the Privacy Act Statement appearing on Standard Form 95.
79.	§ 2016e(2)	This change deletes the Assistant Judge Advocate General (Civil Law) and substitutes therefor the Assistant Judge Advocate General (Military Law) as the addressee for requests for release of JAG Manual investigations.
80.	§ 2021	This change reflects the deletion of naval district commandants and the substitution therefor of commanding officers of naval legal service

		offices for cognizance of investigative reports of incidents giving rise to claims.
81.	§ 2023	This change amends the section pertaining to responses to requests for claims investigations to emphasize the distinction between FOIA and Privacy Act requests and to indicate that files other than medical files may come within the FOIA (b)(6) (personal information) exception.
82.	§ 2032e(2)	This change deletes a reference to JAGINST 5822.2.
83.	§ 2040	This change is made to reflect changes to the quoted regulations, 28 C.F.R. Parts 14.2 and 14.10(a).
84.	§ 2036c(3)	This change is for clarity.
85.	§ 2012a; § 2031b; § 2032a; § 2032c; § 2032d; § 2032e(1); § 2033a; § 2033b; § 2034d; § 2034e; § 2034i; § 2035a; § 2035c(1); § 2035c(2); § 2035c(3); § 2036a; § 2036c; § 2036c(4); § 2036c(5); § 2036c(7); § 2036c(10); § 2036d(1); § 2036d(2); § 2036d(3); § 2036d(4); § 2036d(5); § 2036d(6); § 2037a; § 2037c; § 2037d; § 2038a; § 2038b; § 2039a; § 2040; § 2050; § 2052a; § 2052b; § 2052c; § 2052d; § 2052e; § 2053c; § 2055a; § 2055c(2); § 2055d(5); § 2056; § 2057; § 2060; § 2062a; § 2062b; § 2062c; § 2063a; § 2063b	These sections are changed to correct clerical errors and/or to improve citation format.
86.	§ 2102	This change adds a new subsection to cover personnel claims resulting from terrorist acts or evacuation as provided by Pub. L. No. 96-519.
87.	§ 2103i(3)(c)	This change broadens the exclusion to the definition of "other unusual occurrence" for which property damage claims may be paid.

88.	§ 2121f(1)(b)	This change corrects the description of the command to which personnel claims setoff requests should be sent.
89.	§ 2124a(1)(e)	This change deletes reference to naval districts except for Naval District Washington.
90.	§ 2124a(1)(f) and § 2124a(3)(a)	These changes reflect the new title of the heads of naval legal service offices and detachments.
91.	§ 2124a(2)	This change deletes a reference to a disestablished activity.
92.	§ 2124d(2)	This change inserts an exception concerning nonappropriated-fund-employee claimants.
93.	§ 2126	This change is made for clarification.
94.	§ 2101a; § 2103a; § 2103i(3)(d); § 2103j(2); § 2128	These changes correct clerical errors.
95.	§ 2218	This change deletes references to disestablished activities and billets and corrects clerical errors.
96.	§ 2222b	This change modifies Foreign Claims accounting-data information and the identity of the activity to which copies of paid vouchers must be sent.
97.	§ 2225b	This change corrects an error in citation format.
98.	§ 2201; § 2210b; § 2213; § 2220; § 2221a(4); § 2221a(7); § 2226	These changes correct clerical errors.
99.	§ 2303	This change corrects the section number of a cross-reference.
100.	§ 2403f(3)	This change reflects a new address for the Office of the Commandant of the Coast Guard.
101.	§ 2421	This change conforms this section to changes in the Joint Regulations of the General Accounting Office and the Department of Justice on Federal claims collections standards found in 4 C.F.R. §§ 101.1-102.12.

102.	§ 2502a(3)	This change permits certain Marine Corps officers to administer oaths.
103.	Appendix A-1-d	This change, promulgated as an advance change in ALNAV 143/81, reprints, for easy reference, the 1955 Memorandum of Understanding between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Crimes over which the two Departments have concurrent jurisdiction.
104.	Appendix A-1-i(11) A-1-i(12) A-1-i(13)	These changes reflect the governmental status of the Ryukyu Islands, including Okinawa.
105.	A-1-j	This change, promulgated as an advance change in ALNAV 011/82, reflects the increase from 30 days to 60 days for the time within which an accused may petition the U.S. Court of Military Appeals for grant of review of a decision of the Navy-Marine Corps Court of Military Review.
106.	Appendix A-1-k(1) A-1-k(2)	These changes correct obsolete language, i.e., "file number" in the case of officer signators to the form.
107.	Appendix A-1-n(1) A-1-n(2)	This change incorporates the interim change promulgated by ALNAV 115/80.
108.	Appendices A-8-f A-8-g and A-8-h	These changes delete Appendices A-8-f(1)-(4) due to cancellation of Standard Form 91A and redesignate Appendices A-8-g(1) and (2) and A-8-h as A-8-f(1) and (2) and A-8-g, respectively.
109.	Appendix A-13-c	This change deletes prior Appendix A-13-c and renumbers A-13-d as A-13-c. The language of Appendix A-13-c is modified to comport with the language of revised Sections 1308 and 1310.
110.	Appendix A-18-a	This change reflects modifications in the amounts of customs exemptions.
111.	Appendix A-20-a(1)	This change inserts a cross-reference to section 2012.

112.	Appendix A-20-b	This change makes a minor revision to the format of the settlement agreement and corrects a citation.
113.	Appendix A-20-c	This change corrects a clerical error.
114.	Appendix A-20-d	This change reflects the new title of the commanding officers of naval legal service offices.
115.	Appendix A-20-e	This change reflects the correct title of the heads of naval legal service offices and detachments and the disestablishment of the Eighth Naval District.
116.	Appendix A-20-f	This change reflects modifications to territorial responsibility for payment of claims effected by the disestablishment of naval districts and the establishment of the Naval Legal Service Office, Long Beach, CA.
117.	Appendix A-21-i	This change modifies the list of commands which have received funding authority and accounting data for use by adjudicating authorities assigned thereat.
118.	Appendix A-22-a	This change inserts a cross-reference to section 2223 into the sample form.
119.	Appendix A-24-c(1) A-24-c(2) A-24-c(f	These changes incorporate OMB rates for Medical Care Recovery Act claims.

M 31/978/ch. 3

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO
JAGINST 5800.7B CH-3
JAG: 133

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JAG INSTRUCTION 5800.7B CHANGE TRANSMITTAL 3

From: Judge Advocate General
To: All Ships and Stations

Subj: Manual of the Judge Advocate General

Encl: (1) Revised pages xiii, xiv, 1-1, 1-2, 1-5, 1-6, 1-7, 1-10a, 1-10b, 1-15, 1-16, 1-19, 1-20, 1-21, 1-27, 1-28, 1-35, 1-36, 1-37, 1-38, 1-42a, 1-47, 1-48, 1-54a, 1-54b, 1-54c, 2-5, 2-6, 2-7, 2-8, 2-9, 2-10, 8-5, 8-6, 8-9, 8-10, 9-13, 9-14, 15-1, 15-2, 15-3, 15-4, 20-5, 20-6, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-27, 20-28, 21-1, 21-2, 21-3, 21-17, 21-18, 21-19, 21-19a, 21-20, 21-21, 22-1, 22-2, 22-7, 22-8, 24-5, 24-6, A-1-h(1), A-1-h(2), A-1-h(3), A-1-h(4), A-1-p(5), A-1-p(6), A-1-p(7), A-1-p(8), A-8-f, A-20-b(1), A-20-b(2), A-20-f(1), A-20-f(2), A-21-i, Index-3, Index-4, Index-7, Index-8

(2) List of Effective Pages (after insertion of Change 3)

(3) Summary of Changes and Editorial Corrections included in Change 3

1. Purpose. To transmit Change 3 to the JAG MANUAL.

2. Action. The revised § 0101(b(6) will not become effective until the expected revision to article 1158.2, U.S. Navy Regulations, 1973, is promulgated. All other revisions not previously promulgated as advance changes to the JAG Manual are effective as of the date of this instruction. Insert new pages which constitute enclosure (1), and remove the pages superseded thereby.

B. A. HARLOW
By direction

D 205. 6/2:

LIST OF EFFECTIVE PAGES

After Change 3 is inserted, the JAG Manual consists of the following pages which are part of the original issue unless otherwise indicated (right-hand pages only are listed):

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SUMMARY OF CHANGES AND EDITORIAL CORRECTIONS INCLUDED IN THIS REVISION

1.	§ 0101a(2)(a)	This change permits officers exercising general court-martial jurisdiction to impose nonjudicial punishments upon officers and warrant officers authorized by Article 15(b)(1)(B), UCMJ. The change incorporates the text of ALNAV 022/83.
2.	§ 0101b(6)	The current provision prohibits performance of extra duties on Sundays, although Sundays count in the computation of the period for which such punishment is imposed. This amendment makes the prohibition inapplicable to inactive duty reservists and reservists on very short periods of active duty. Promulgation of this amendment will be coordinated with the expected revision to article 1158.2, U.S. Navy Regulations, 1973.
3.	§ 0101f(2) § 0101f(4) § 0108a § 0116d(1) § 0116d(2) § 0125a(2)(a) § 0125b(2)(a) § 0138k(1) § 0207a § 0207b § 0207c § 0207e § 0210a § 0212a § 0806a § 0911d	OPNAVINST 5400.24C of 14 October 1981 altered the definition and functions of area coordinators. To provide for the continued performance of certain recurring legal functions, OPNAVNOTE 5400 of 16 June 1982 states that, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, legal functions previously performed by an area coordinator will continue to be performed by the area coordinator or by a subordinate commander located within the area coordinator's geographic area of responsibility and designated by the area coordinator for this purpose. These amendments are made to implement this new requirement. The Marine Corps has also added a new section to clarify from whom investigative assistance should be requested in cases which arise away from the parent command of a Marine involved in an incident.
4.	§ 0101f(8)	This subsection is amended to clarify that there is no right to appeal the decision to vacate a suspension of nonjudicial punishment under the provisions for appeal of nonjudicial punishment.
5.	§ 0103a(2)	This subsection is amended by the addition of two commands, each of which already has been designated by the Secretary of the Navy as authorized to convene general courts-martial. Furthermore, although generally authorized to convene general courts-martial pursuant to § 0103(1) of this Manual, commanders of naval bases are specifically

designated due to occasional gapping of flag officer reliefs. This latter amendment was recommended by VCNO for inclusion in this change of the JAG Manual.

6.	§ 0107e(2)(d)	This subsection is amended to clarify when action under the UCMJ may be appropriate in the interests of justice and discipline, and when prior criminal action has been taken in a domestic or foreign court.
7.	§ 0107g(3)	This subsection incorporates the guidance contained in ALNAV 066/83 specifying procedures for consultation with the Department of Justice in investigations involving national security.
8.	§ 0117	This section is amended to clarify that summary courts-martial may, prior to sentencing, consider an accused's personnel records including records of nonjudicial punishment.
9.	§ 0124a(5)(b)	This subsection is amended to specify the distribution of court-martial promulgation orders to the PASS Detachment maintaining the accused's service record, if appropriate.
10.	§ 0124 § 0125 § 0133	These changes are made to reflect the current name of the U.S. Navy-Marine Corps Court of Military Review.
11.	§ 0133d(3)(a)	This subsection is amended to modify a previous change in order to reflect the actual practice of serving copies of NMCMR decisions in all cases upon appellate defense counsel by the Clerk of Court pursuant to Rule 19, Courts of Military Review Rules of Practice and Procedure.
12.	§ 0141a	This subsection is amended to redesignate the Marine Corps member to the JAG Ethics Committee.
13.	§ 0142A	This new section establishes procedures for the preparation, submission, processing, and resolution of complaints regarding the misconduct or disability of military judges. It also sets forth the standards and the procedures for revoking the certification of military judges.
14.	§ 0211b(1)	This subsection is revised to reflect an expansion of the categories of investigations which must be reviewed by HQMC.
15.	§ 0814(d)	This subsection is amended to delete a reference to a cancelled form.
16.	§ 0814(e)	This subsection is amended to reflect a changed reference.

17.	§ 0911d	This subsection is amended to clarify the responsibility to order the convening of investigations into incidents involving Marine Corps reservists.
18.	§ 1510a thru g	This amendment sets forth provisions for the supervision of trustees as well as guidelines for submission of accounting reports. It also makes it clear that trustees are bound by a legally enforceable obligation, and must comply with the regulations issued by the Office of the Judge Advocate General. The amendment authorizes the Judge Advocate General or DAJAG(CA), in general terms, to terminate payments and appoint a successor trustee upon failure of the trustee promptly to make a satisfactory annual accounting report.
19.	§ 2003b	This subsection is amended to reflect a title change.
20.	§ 2013c(2)	This subsection is amended to expand a nonexclusive list of information and documents which may be demanded to substantiate administrative claims.
21.	§ 2016e(1)	This subsection is amended to reflect current procedures for the ordering and preparation of litigation reports.
22.	§ 2018a	This subsection is amended to add more comprehensive settlement agreements, including the addition of an indemnity clause in the agreements.
23.	§ 2024b(3)	This subsection is amended to add Egypt and Oman to the list of countries for which the Department of the Air Force has single-service responsibility for processing claims for and against the United States.
24.	§ 2032 § 2034e § 2403f(3)	These subsections are amended to correct clerical errors.
25.	§ 2034g § 2053f	These subsections are amended to reference the new appendices containing sample settlement agreements.
26.	§ 2102a § 2124a § 2124b § 2128b Appendix A-21i	These subsections incorporate the guidance contained in ALNAV 129/82 implementing amendments to various portions of the Military Personnel and Civilian Employees' Claims Act of 1964 [32 U.S.C. §§ 240-243 (1976 and Supp. IV 1980)]. The amendments provide authority for a maximum payment of $25,000 vice $15,000 for claims involving the loss of or damage to personal property arising on or after 28 July 1982. § 2124(b) establishes monetary limits to the adjudicating authority of Marine Corps claims offices and

	distinguishes procedures applicable to all Navy/Marine Corps personal property claims from those relating to Navy or Marine Corps claims.
27. § 2124e	This subsection specifies accounting data instead of referencing the Navy Comptroller Manual.
28. § 2128	This section establishes certain appeal and reconsideration procedures for the Navy and Marine Corps; reemphasizes the fact that notice of appeal and reconsideration rights are mandatory; and provides for all other Marine Corps appeal and reconsideration procedures.
29. § 2222b	This subsection changes the authorization accounting activity from the Navy Accounting and Finance Center, Washington, D.C., to the Navy Regional Finance Center, Washington, D.C.; changes the object class to reflect payment to a citizen or corporation of a foreign country; and adds a requirement to forward a copy of the paid voucher to OJAG.
30. § 2225	This section is amended by deleting the word "Meritorious" in the heading.
31. § 2225b	This subsection is amended by deleting the word "award" in line 4 and substituting therefor the word "resolution".
32. Appendix A-1-h	A revised appellate rights statement, incorporating the requirements of defense counsel's post-trial obligations mandated by *U.S. v. Palenius*, 2 M.J. 86 (CMA 1977), was initially published in 69 *O.T.R.* (1977). Although this revised appellate rights statement was never included in the *JAG Manual*, the revised statement and variations thereof are currently being used in the field. Based upon recommendations from the field, appellate government and defense counsel, and the advisability of having a standard format, the revised statement has been further revised and updated.
33. Appendix A-1-p	This change updates the reference to a JAG instruction and corrects the numbering of appellate exhibits to correspond to that which is utilized in actual practice.
34. Appendix A-8-f and A-8-g	The former Appendix A-8-f is deleted and the Appendix A-8-g is redesignated A-8-f.

35. Appendix A-20-b This amendment replaces the former appendix with two new appendices, A-20-b(1) and A-20-b(2), which add more comprehensive language and an indemnity clause to the agreements.

36. Appendix A-20-f(1) This amendment is made to indicate that San Luis Obispo County is within NLSO San Francisco's territorial responsibility for payment of claims.

M 31/985/ch.4

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO
JAGINST 5800.7B CH-4
Ser 133/11150/5
11 SEP 1985

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JAG INSTRUCTION 5800.7B CHANGE TRANSMITTAL 4

From: Judge Advocate General
To: All Ships and Stations

Subj: MANUAL OF THE JUDGE ADVOCATE GENERAL

Ref: (a) JAGNOTE 5800 JAG:204 of 17 Jul 84; Subj: INTERIM CHANGE TO JAGINST 5700.7B, MANUAL OF THE JUDGE ADVOCATE GENERAL

Encl: (1) Revised pages viii, ix, 2-9, 6-2, 6-3, 6-4, 6-5, 8-7, 8-8, 8-11, 8-12, 9-11, 9-12, 11-1, 11-2, 11-3, 11-4, 11-5, 11-6, 11-7, 11-8, 12-13, 12-14, 12-15, 12-16, 12-17, 12-18, 12-19, 12-20, 13-5, 20-1, 20-9, 20-10, 21-18, 21-19, 24-4, 24-10, A-8-g, A-8-h, A-11-a, A-11-b, index-1, index-2
(2) List of Effective Pages (after insertion of Change 4)
(3) Summary of Changes and Editorial Corrections included in Change 4

1. Purpose. To transmit Change 4 to the JAG Manual.

2. Action. Revisions not previously promulgated as advance changes to the JAG Manual are effective as of the date of this change transmittal. Insert new pages which constitute enclosure (1) and remove pages superseded thereby. In addition, enclosure (1) to reference (a) is hereby incorporated into the JAG Manual as the new chapter I effective 1 August 1984. It replaces chapter I of 5800.7B as amended through change 3, which should now be removed. Enclosure (2) to reference (a) is hereby incorporated into the JAG Manual. In the JAG Manual index, make a notation that all index references to chapter I are no longer effective.

Richard L. Slater

RICHARD L. SLATER
Acting Judge Advocate General

D 205.6/2:

JAGINST 5800.7B CH-4
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LIST OF EFFECTIVE PAGES

After Change 4 is inserted, the JAG Manual consists of the following pages which are part of the original issue unless otherwise indicated. Right-hand pages only are listed, except where necessary to indicate clearly the effective pages.

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* JAGNOTE 5800 of 17 Jul 84, incorporated into JAGMAN by Change 4.

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* JAGNOTE 5800 of 17 Jul 84, incorporated into JAGMAN by Change 4.

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SUMMARY OF CHANGES AND EDITORIAL CORRECTIONS INCLUDED IN THIS CHANGE

1. Chapter I	Chapter I is completely revised. See enclosure (3) to JAGNOTE 5800 JAG:204 of 17 Jul 84 for detailed summary of changes.
2. § 0211c(2)	This subsection is amended to incorporate ALNAV 090/83, which mandates the forwarding of advance copies of all death investigations to JAG. The revision also clarifies the existing requirement to forward advance copies of serious cases by expressly including incidents in which the adequacy of medical care is reasonably in issue, whether or not death results.
3. § 0602b	This subsection is amended to provide for additional language to be included in the appointing order for fact-finding bodies convened primarily for claims purposes to make it clear that the investigation is being accomplished in contemplation of litigation.
4. § 0608b	This subsection is amended to provide for additional language to be included in the preliminary statement to investigative reports where the investigation was convened primarily for claims purposes to make it clear that the investigation has been accomplished in contemplation of litigation.
5. § 0810a	This subsection is amended to require the convening of a fact-finding body in any case involving death in which the adequacy of medical care is reasonably in issue.
6. § 0810f	This subsection is amended to incorporate ALNAV 090/83, which provides that completion and forwarding of death investigations should not be delayed while awaiting final autopsy reports unless their inclusion is absolutely essential to completion of the investigation. Former § 0810f is renumbered as § 0810g.
7. § 0811a	This subsection is amended to clarify investigation requirements in any case involving death, serious injury, or serious illness in which the adequacy of medical care is reasonably in issue.

8. § 0815a(3)	This subsection is amended to add a provision which states that the format to document a § 0815a(3) hearing is contained in the Appendix to the JAG Manual.
9. § 0910d	This subsection distinguishes between investigations convened solely for the handling of claims matters and those convened for other purposes, and requires claims investigations to be forwarded in accordance with separate procedures that apply only to such investigations.
10. Chapter XI	This revision is intended to resolve the ambiguities existing in the present chapter with regard to the definition of a "wrong" which may be redressed by means of a complaint brought under Article 138, UCMJ, or Article 1106, U.S. Navy Regulations, 1973, as well as to clarify the steps involved in submitting, acting upon, and reviewing such complaints.
11. § 1210	This revision eliminates superfluous material and discussion. It indicates that only the Admiralty Division of the Office of the Judge Advocate General now has the authority to request surveys to be conducted under the Navy's contract with the United States Salvage Association. The revision also provides that the Admiralty Division must be notified of all admiralty incidents that may give rise to an admiralty claim for or against the United States in order that a survey can be arranged if warranted.
12. § 1212a § 1212b § 1213b § 1214b § 1214d § 1214e § 1215h	These subsections are amended to update text citations and certain points of admiralty practice and procedure.
13. § 1307	This section is amended to provide citation to the regulations governing delivery of naval personnel to foreign authorities when there is a status of forces agreement in effect between the United States and the foreign country concerned.
14. § 2007a	This subsection is amended to provide for additional language to be included in the preliminary statement to claims investigative reports to make it clear that

the investigation has been accomplished in contemplation of litigation.

15.	§ 2008a	This amendment changes procedures to provide for the expeditious forwarding of claims investigations, with deficiencies to be corrected by a supplemental investigation, and provides for an advance copy to be forwarded to the NLSO that will have cognizance over any claim that might arise.
16.	§ 2009a	This amendment changes procedures that are to be followed when there are deficiencies in the initial claims investigation. Instead of being returned to the investigating officer for additional investigation, the deficient report will be forwarded by reviewing authorities and the endorsement will indicate that supplemental material will be submitted.
17.	§ 2124b § 2124d	These subsections are amended to reflect a recent reorganization within the Manpower Department, Headquarters United States Marine Corps.
18.	§ 2403c(1)	This amendment extends the requirement for submission of a NAVJAG Form 5890/12 to cases where a patient is admitted for inpatient care of any duration or outpatient care of more than seven treatments.
19.	§ 2416c	This change corrects a citation to the Joint Travel Regulations.
20.	Appendix A-8-g and h	This addition provides a format to document a § 0815a(3) hearing.
21.	Appendix A-11-a	This addition provides a format for submission of an Article 138, UCMJ, complaint.
22.	Appendix A-11-b	This addition provides a format for submission of the report required by § 11081.

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conducted the investigation upon request of an afloat command, as provided in sections 0207a and 0806, information copies of the investigation record or report shall be forwarded to interested afloat commands. With respect to the right of a party to the investigation to receive a copy, see section 0304i.

(2) In serious cases, including cases in which the adequacy of medical care is reasonably in issue, whether or not death results, and in cases in which the convening authority considers that the Navy Department should have advance information, he shall forward an advance copy to the Judge Advocate General. This includes, but is not limited to, all death investigations conducted pursuant to section 0810. Additionally, if the record or report of investigation involves a possible admiralty claim, an advance copy shall be forwarded as soon as possible to the Judge Advocate General (Admiralty Division). In all cases in which advance copies are forwarded to the Judge Advocate General, the original report shall so note, and each subsequent endorser shall forward an advance copy of the endorsement placed thereon to the Judge Advocate General. Respecting records or reports of investigation which may involve Medical Care Recovery Act claims, see section 2404c.

(3) U.S. Navy convening authorities shall, when security classification permits, forward an advance copy of the record or report of investigation as soon as practicable in cases involving inquiry into material damage to a ship, submarine, or Government property (except aircraft) to: Commander, Naval Safety Center, Naval Air Station, Norfolk, Virginia 23511. U.S. Navy commanders subsequently reviewing such record or report shall forward advance copies of their endorsements as above. In cases of aircraft accidents, advance copies of investigations and endorsements thereon will be forwarded to Commander, Naval Safety Center only upon his specific request.

(4) In cases involving postal losses or offenses, an advance copy of the record or report of investigation shall be forwarded by the convening authority to the Chief of Naval Operations (Postal Affairs Branch)/Commandant of the Marine Corps (Postal Affairs Branch). See paragraph 6202, U.S. Navy Postal Instructions. OPNAVINST 5112.1 series.

(5) In cases involving death or injury of personnel, the original will be forwarded with sufficient copies that the Judge Advocate General will receive the original and three copies.

0212 INVESTIGATIONS BY NAVAL INVESTIGATIVE SERVICE

a. *General.* The investigative jurisdiction and responsibilities of the Naval Investigative Service (NIS) and the field components thereof are set forth in SECNAVINST 5520.3 series. Officers in command are cautioned to comply meticulously with the provisions and spirit of that instruction. Matters pertaining to espionage, sabotage, subversive activities, fraud against the Government, and major violations of the UCMJ are included within the jurisdiction of NIS. Where the investigative service of NIS is utilized, the officer in command shall take appropriate measures to preserve evidence and to ensure that any other phases of investigation do not compromise or otherwise impede the investigative activities of NIS. In the event the officer in command deems it necessary to proceed with inquiry by a fact-finding body prior to the completion of the investigative phase by NIS, he shall first communicate with the local NIS office and establish coordination of the investigative effort. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, if the NIS office objects to the initiation of the inquiry by a fact-finding body, the matter should be referred for resolution to the appropriate area coordinator or subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose.

b. *Polygraph examinations.* DoD Directive 5210.48 of 6 October 1975, prohibits the inclusion in JAG Manual Investigations of polygraph examination reports or the results thereof. If any polygraph report or its results appear to be necessary or relevant to an informed decision by any reviewing authority for law enforcement or security purposes, an appropriate cross-reference notation should be made in the investigative report showing its availability. Polygraph examinations which are relevant to Naval investigations are normally conducted by NIS and the reports and results thereof are retained by that organization.

c. *Naval Investigative Service Reports of Investigation (ROI).* ROI should not be included in records of JAG Manual investigations. NIS investigations consist of the ROI (the narrative summary portion) and enclosures. Unless a local NISRA indicates to the contrary, clearance is not required for the inclusion of the enclosures to the ROI in a JAG Manual investigative report. If any ROI appears to be necessary or relevant to an informed decision by any reviewing authority with respect to the JAG Manual investigation, an appropriate cross-reference notation should be made int he investigative report indicating its availability.

0213 PRELIMINARY INVESTIGATION OF MAJOR INCIDENTS

a. *General.* The investigation of major incidents is sometimes complicated by the premature appointment of a court of inquiry or other formal investigative body. Without ascertaining the sequence of events and which witnesses can give enlightening testimony, the proceedings are made longer and more difficult as the result of lack of preparation prior to formal hearings. The purpose of all investigative proceedings is to inform authorities of the Department of the Navy fully and concisely as to the incident, its causes, and the responsibility therefor.

b. *Suggested procedure.* In major incidents it may be advisable to order immediately an informal one-officer investigation or informal board of investigation to ascertain the seriousness of the incident, to interview all witnesses, and to prepare a summary of their testimony. The convening authority may direct in his appointing order (oral or written) that the investigative body submit an interim oral report by a specified date. At the time of the oral report, the informal investigation may be terminated and the investigative effort directed into a court of inquiry or other formal investigation. Summaries of testimony or evidence developed in the informal investigation may be used as an aid by the later investigative body. Inasmuch as all courts of inquiry and most formal boards of investigation directed to inquire into major or complicated incidents have appointed counsel, consideration should be given to detailing the officer who conducted the informal investigation to assist counsel for the court or board.

c. *Function.* It is not the function of such preliminary investigation to fix responsibility for the incident or event. Its duties are to obtain statements of witnesses and to inform the convening authority as to the identity of the witnesses and the extent to which they can testify to pertinent facts.

0214 AUTHORITY TO ADMINISTER OATHS

A person on active duty appointed to perform investigative functions or to serve as counsel for an administrative fact-finding body within the meaning of these regulations is empowered to administer oaths in the performance of his duties. See Article 136, UCMJ.

Chapter VI

INFORMAL INVESTIGATIONS

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0603 PARTIES

0604 OATHS

0605 PROCEDURES

0606 THE INVESTIGATION

- a. General
- b. Real evidence
- c. Documentary evidence
- d. Testimony or statements of witnesses
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- f. Participation of an expert as a member
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0607 COMMUNICATIONS WITH CONVENING AUTHORITY

0608 INVESTIGATIVE REPORT

- a. Form and content in general
- b. Preliminary statement
- c. Findings of fact
- d. Opinions
- e. Recommendations
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- g. Signing and authenticating
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0609 SAMPLE REPORT

0601 COMPOSITION AND APPOINTMENT

Informal fact-finding bodies may be composed either of a single investigator or of two or more members. The single informal investigator and members of an informal board of investigation may be commissioned or warrant officers, senior enlisted persons, or mature civilian employees of the Department of the Navy. If practicable, the member or members of an informal investigation should not be junior to any person whose conduct or performance of duty will be subject to inquiry. Ordinarily, counsel is not appointed for an informal fact-finding body.

0602 APPOINTING ORDER

a. *General.* Informal fact-finding bodies may be convened by either an oral or written order of any officer in command (see section 0206b). In any case in which other than commissioned officers are appointed, or in which the appointing order expressly convenes an informal board of investigation, the fact-finding body so convened will be an informal fact-finding body under this chapter. A sample appointing order is contained in Appendix A-6-a.

b. *Contents.* In every case the appointing order should direct the fact-finding body to report findings of fact. When opinions and/or recommendations are desired the appointing order should expressly direct their submission. In any case of doubt or ambiguity as to the scope and extent of the investigation desired, the appointing order should recite the specific purpose of the investigation and provide explicit instructions as to the scope of the inquiry. The appointing order may direct that testimony or statements of some or all witnesses be taken under oath and may direct that testimony of some or all witnesses be recorded verbatim. In any case in which it is directed that testimony be taken under oath and/or recorded verbatim, the convening authority should expressly indicate that the investigation is nonetheless "informal." In any case in which detailed instructions are provided to an informal fact-finding body, consideration should be given to the issuance of a written appointing order. An appointing order should contain directions in regard to compliance with the Privacy Act of 1974, Article 31 of the Uniform Code of Military Justice, and sections 0306 and 0606d(3) of this Manual. If the informal investigation is convened primarily for the purpose of gathering information necessary for the adjudication of an administrative claim against the United States under the Federal Tort Claims Act, or for the defense of a legal action against the United States, the appointing order should contain the following language: "This investigation is being convened because of anticipated litigation and for the purpose of assisting attorneys representing the interests of the United States in this matter."

0603 PARTIES

Parties may not be designated by the convening authority or by the fact-finding body in an informal investigation.

0604 OATHS

A single informal investigator and members of informal boards usually are not sworn. When an informal fact-finding body takes testimony or statements of witnesses under oath, it should utilize the oath prescribed in section 0415.

0605 PROCEDURES

Inasmuch as an informal fact-finding body does not perform the collateral function of affording a hearing (see section 0201b(2)), it is free to determine and utilize the most effective methods of seeking out, uncovering, collecting, analyzing, and recording all information which is or may be relevant to a determination of all the facts and circumstances of the subject under inquiry. For example, if a board, it may divide aspects, witnesses, or evidentiary facets of the inquiry among the members for individual investigation and development, holding no collective meeting until an initial review is made of all the information collected to determine its completeness. It may call witnesses before the assembled members to present testimony in a formal manner or it may obtain relevant information from the witnesses by informal personal interview, correspondence, telephone inquiry, or other means. In short, an informal fact-finding body may employ any method which it finds most efficient and effective in performing its investigative function.

0606 THE INVESTIGATION

a. *General.* Facts and circumstances of an incident or matter under investigation are most often proved or disproved by: (1) inferences drawn from real (tangible) evidence; (2) documentary evidence; and (3) testimony or statements of witnesses. In addition, some facts or circumstances may be of such common, indisputable knowledge that no need exists to obtain specific evidence to support them. In this latter category are, for example, general facts and laws of nature, general facts of history, the locations of major elements of the Navy or Marine Corps, the organization of the Department of Defense and its components, and similar items. This includes, but is not necessarily limited to, those matters of which judicial notice may be taken (see paragraph 147, MCM).

b. *Real evidence.* Whenever the condition, location, or other characteristic of an item of real evidence is of value in tending to establish the existence or nonexistence of a fact, that item or a photograph, description, or other suitable reproduction thereof should be included in the report of investigation, together with the necessary statements of witnesses identifying the item and certifying to the accuracy of the reproduction. If the physical layout of a room, compartment, or other structure is relevant, the investigation should consider the desirability of including plans or charts of the space. If the interrelated location of items in a general area is of factual significance, maps, aerial photographs, or similar projections may be of value in the report. In addition, the investigator or board members should not overlook their own value as witnesses respecting real evidence. If a member observes an item and gains impressions therefrom not adequately portrayed by a photograph, chart, map, or other representation, he should record his impressions concerning the items and include such statement as an enclosure to the report.

c. *Documentary evidence.* Documentary evidence is that taken from records, documents, letters, diaries, reports, exisiting statements, and other written, printed, or graphic sources by which the existence or non-existence of a fact may be indicated. This type of evidence is often the best and most persuasive evidence available. Single investigators and boards should be alert to discover all such items which may be relevant to the matter under inquiry and to attach the originals or copies thereof to the report.

d. *Testimony or statements of witnesses.*

(1) *Witnesses not suspected of misconduct or improper performance of duty.* Ordinarily, statements of witnesses will be obtained during an informal interview in which the witness relates his knowledge and it is then reduced to writing and signed; however, in the discretion of the single investigator or board, witnesses may be called and their testimony elicited by means of recorded questions and answers. If a signed statement is obtained, the single investigator or board may assist the witness in preparing his written statement to avoid excessive inclusion of irrelevant material or the omission of important facts and circumstances which are within the knowledge of the witness. However care should be taken to ensure that the statement is phrased in the actual language of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or non-existence of material fact.

(2) *Witnesses suspected of an offense, misconduct, or improper performance of duty.* In the case of a witness suspected of an offense, see Article 31(b), UCMJ. If it appears probable that a prosecution of the individual for the suspected offense may ensue, then refer to Appendix A-1-n. Ordinarily the investigator or board should collect all relevant information from all available sources other than persons suspected of offenses, misconduct, or improper performance of duty before interviewing such persons. Before interviewing a person in the Armed Forces who is suspected of misconduct or improper performance of duty, the person concerned should be advised generally of the nature of the inquiry and of the possible effect of an ultimate adverse determination. Such person should then be given an opportunity to discuss the matter with someone not acting for the Government in connection with the investigation.

(3) *Witnesses suffering from a disease or injury.* A member of the Armed Forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, shall be advised that he has a statutory right not to sign such a statement and that he therefore may not be required to do so. See section 0306 of this Manual.

(4) *Privacy Act compliance.* When an individual is requested to supply personal information, it is mandatory that there be compliance with section (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a.

e. *Rules of evidence.* An informal fact-finding body is not bound by the formal rules of evidence applicable before courts-martial and may collect, consider, and include in the record any matter of reasonable believability or authenticity which is relevant to the matter under inquiry. In general, however, care should be taken to authenticate (indicate the genuineness of) real and documentary items or reproductions thereof enclosed with the report by certifications of correctness of copies or statements of authenticity, as may be appropriate. The statement of a witness should be signed by the witness or should be certified to be either an accurate summary, or the verbatim transcript, of oral statements made by him.

f. *Participation of an expert as a member.* A person possessing technical knowledge may be appointed to an informal fact-finding body either for full participation or for the limited purpose of utilizing his special experience. If appointed for this limited purpose, he need not participate in any aspect of the inquiry that does not concern his specialty. The investigative report in such cases will make clear any limited participation by a member.

g. *Classified material.* See section 0209c of this Manual.

0607 COMMUNICATIONS WITH CONVENING AUTHORITY

If at any time during the investigation it should appear, from the evidence adduced or otherwise, that circumstances exist in the light of which the convening authority might consider it advisable to enlarge, restrict, or otherwise modify the scope of the inquiry or to change in any respect any instruction provided in the appointing order, a report should be made to the convening authority. The convening authority may take such action on this report as he, in his discretion, deems appropriate.

0608 INVESTIGATIVE REPORT

a. *Form and content in general.* In all cases an investigative report shall be submitted in letter form. It shall consist of a preliminary statement, findings of fact, opinions and recommendations when so directed by the convening authority, and enclosures.

b. *Preliminary statement.* The purpose of the preliminary statement is to inform the convening and reviewing authorities that the requirements as to procurement of all reasonably available evidence and the directives of the convening authority have been met. After setting forth the nature of the investigation, it should set forth in detail the difficulties encountered in the investigation, if any; any limited participation in the investigation by a member; and any other information necessary for a complete understanding of the case. The itinerary of the investigator or board in obtaining information is not required. The preliminary statement does not obviate the necessity for findings of fact as to pertinent material matters. For example, despite expressions in both the subject and the preliminary statement that an investigation is concerned with the crash of an airplane and resulting fatal injuries to the pilot, the initial findings of fact should set forth in detail the description of the airplane, time and place of the accident, the identity of the pilot, etc. If the informal investigation was convened primarily for the purpose of gathering information necessary for the adjudication of an administrative claim against the United States under the Federal Tort Claims Act or for the defense of a legal action against the United States, the preliminary statement should contain the following language: "This investigation has been conducted and this report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."

c. *Findings of fact.* The findings of fact represent the evaluation of the evidence and information received and collected. These findings must be as specific as possible as to times, places, persons, and events. Each fact may be made a separate finding, or facts may be grouped into a narrative. It is for the fact-finding body to determine which method is the most effective in the presentation of a particular case.

d. *Opinions.* Opinions are the logical inferences or conclusions which flow from the facts. The investigation will express its opinions when directed to do so by the convening authority. For guidance as to the opinions normally required in specific situations, see chapters VIII and IX.

e. *Recommendations.* Recommendations will be made only when the convening authority has so directed in his order appointing the fact-finding body. If required, such recommendations as are specifically directed and those which appropriately flow from the findings of fact and expressed opinions shall be made. If trial by court-martial is recommended, a charge sheet, signed and sworn to by a member joining in the recommendation, shall be prepared and submitted as an enclosure to the investigative report. See paragraph 29,MCM. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter shall be prepared and forwarded as an enclosure to the investigative report; if a nonpunitive letter is recommended, a draft will be prepared and separately forwarded to the appropriate commander for issuance, but will not be included as a part of the investigative report. See Appendix A-1-a,A-1-b,and A-1-c.

f. *Enclosures.* The written appointing order, if any, will be the first enclosure. Subsequent enclosures will contain all the evidence developed by the investigation. Each statement, affidavit, transcript of testimony, photograph, map, chart, document, or other exhibit will be made a separate enclosure. The signatures of the board members to the basic report constitute authentication of all enclosures thereto; individual authentication or witnessing, however, is indicated in the situations dealt with in section 0606b,c and e.

g. *Signing and authenticating*

(1) All persons who participated in the investigation shall sign the investigative report. This includes all persons who participated in the investigation at the time of the findings, even though their participation was limited.

(2) If there are two members of an informal board of investigation and they cannot agree on findings of fact, opinions, or recommendations, the report shall be signed by the senior member. The other member shall, in a signed dissenting report, state clearly the parts of the report with which he disagrees, and his reasons therefor. If the informal board consists of three members, the majority shall provide the report of the board and the signed minority report of the dissenting member, stating his reasons for dissent, shall be included.

h. *Privacy Act compliance.* When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C.§ 552a) in accordance with section

0308 and Appendix A-3-a. The investigative report must reflect the foregoing compliance.

0609 SAMPLE REPORT

A sampie informal investigative report is contained in Appendix A-6-b(1).

0809 MEDICAL AND DENTAL TREATMENT

a. *Refusal of treatment.* If a member unreasonably refuses to submit to medical, surgical, or dental treatment, any disability that proximately results from such refusal shall be deemed to have been incurred as a result of the member's own misconduct. See article 18-15, Manual of the Medical Department.

b. *Venereal disease.* Any disability resulting from venereal disease shall not support a misconduct finding if the member has complied with regulations requiring him to report and receive treatment for such disease. See article 22-18, Manual of the Medical Department.

0810 SPECIAL CONSIDERATIONS IN DEATH CASES

a. *When fact-finding body required.* A fact-finding body (either formal or informal), must be convened in the following situations:

(1) In any case in which the death of a member of the naval service occurred other than from natural causes, and particularly all apparent suicides (see paragraph 6-107b, OPNAVINST 5510.1E)(for deaths resulting from aircraft accidents, see section 0902);

(2) In any case in which civilians or other non-naval personnel are found dead on a naval installation under peculiar or doubtful circumstances unless the incident is one over which the Naval Investigative Service has exclusive jurisdiction. (See section 0212 of this Manual; SECNAVINST 5520.3 series; and paragraph 6-110, OPNAVINST 5510.1E (Security Manual)).

(3) In any case involving death in which the adequacy of medical care is reasonably in issue. (See section 2003 of this Manual.)

b. *Findings concerning misconduct and line of duty prohibited.* While it is important that all significant and relevant facts be recorded in a timely manner in any of the situations described in subsection a above, it should be noted that no survivor's benefit statute administered by the Department of the Navy is conditioned upon a misconduct-line of duty finding. To express recommendations or findings concerning misconduct or line of duty in death cases serves no useful purpose and such expressions are not desired by the Veterans' Administration, which makes its own findings. Accordingly, fact-finding bodies will express no opinion concerning misconduct or line of duty in death cases. Nor shall the convening authority or reviewing authorities enter any finding in this regard. If such a recommendation and/or finding has been recorded inadvertently or recorded after the injury but before death occurred, the record need not be returned for correction. Reviewing authorities should note the error and indicate its lack of validity in the forwarding endorsement. In any death case in which the record contains an adverse finding or opinion with respect to line of duty or misconduct, it is proper for reviewing authorities to comment and/or to enclose additional data which may tend to counter such finding or opinion.

c. *Death as a result of enemy action.* No report to the Judge Advocate General is required in the case of a death occurring as a result of enemy action. However, a fact-finding body should be convened, and the record forwarded in any case in which peculiar or doubtful circumstances are involved. Because a number of commercial life insurance policies contain certain restrictions and/or certain types of double indemnity provisions, it is desirable to ensure that the essential facts are recorded while witnesses are known and available. To the extent feasible, the facts reported should permit determinations as to whether death resulted from accidental causes, natural causes, or enemy action.

d. *Inquest duties.* A fact-finding body ordered to investigate the death of a member of the naval service, or of any person found dead on a naval installation, shall perform the duties of an inquest if the death was suffered under peculiar or doubtful circumstances. After convening, the fact-finding body will proceed at the first available opportunity to the place where the body may be, carefully identify it, and note the surroundings, if pertinent. Release of the remains of deceased personnel is to be expedited in all cases. Such medical witnesses as may be available shall be interviewed or their official reports obtained, including, whenever possible, evidence from the doctor who performed the autopsy if one was made, or a doctor who assisted or witnessed such autopsy. The fact-finding body will ascertain from these medical witnesses the exact condition of the body and the medical opinion as to the cause of death. The date of death shall be stated as a fact or as an opinion with the time of death fixed as precisely as the evidence permits. Copies of the autopsy protocol and the death certificate shall be appended as enclosures to the record.

e. *Autopsies.* When death of a member of the uniformed services on active duty or active duty for training occurs under any of the circumstances set forth in article 17-18, Manual of the Medical Department and when an autopsy is authorized by the commanding officer upon advice of the fact-finding body or medical officer, and in other cases in which authorization from proper authority has been obtained, the appointed fact-finding body shall provide the medical officer designated to conduct the autopsy with a detailed preliminary report of circumstances surrounding the death. In those cases in which authorization for autopsy has been granted by other than the commanding officer, the medical officer shall be responsible for advising command authority that such authorization has been granted so as to facilitate the preliminary investigation and report thereof to the medical officer conducting the autopsy. Upon completion of the autopsy, the medical officer conducting the autopsy shall provide the fact-finding body with a copy of the preliminary autopsy findings as to the cause of death and, when completed, a copy of the final protocol. The fact-finding body shall provide the medical officer conducting the autopsy with a copy of the final investigative report. (See Appendix A-8-a which quotes article 17-18, Manual of the Medical Department.)

f. Notwithstanding the guidance contained in subsections 0810d and e above, completion of a death investigation and its forwarding will not be delayed to await final autopsy reports, autopsy protocols, death certificates, or similar documents unless their inclusion is absolutely essential to the completion of the investigative report. The unavailability of such documents should be noted; the investigation completed and forwarded. Documents subsequently obtained shall be forwarded by separate correspondence via the review chain, advance copy to the Judge Advocate General, with appropriate reference to the report of investigation/forwarding endorsement.

g. *Letter reports.* In those death cases in which the appointment of a fact-finding body is not required by subsection a above, and yet it is considered that a record of the circumstances involved be maintained in the Office of the Judge Advocate General, a letter report may be used. An example of a letter report in a death case is contained in Appendices A-8-b(1) and A-8-b(2).

0811 WHEN CLAIMS OR OTHER MATTERS ARE INVOLVED

a. *Examination of reports.* Any report of injury or death should be carefully examined to see if potential claims by or against the Government may be involved. This is of special concern where medical care has been furnished and the Government may be entitled to recover third party medical claims. See chapter XXIV of this Manual concerning the requirements for processing such claims. In any case involving death, serious injury, or serious illness in which the adequacy of medical care is reasonably in issue, see section 2003 of this Manual for investigation requirements.

b. *Combining investigations.* There is no prohibition against combining misconduct-line of duty investigations with claims investigations. Facts elicited in a claims investigation may be sufficient and may be used as a basis for entering line of duty and not misconduct findings in the health record as authorized by section 0814b or in making the abbreviated reports as authorized by section 0814c.

c. *Forwarding advance copies.* Where investigations have been combined (or directed to fulfill more than one function) and there is need for retaining the original record at the command or reviewing level for such purposes as courts-martial, contractual disputes, claims, litigation, etc., the retaining command shall ensure that a legible advance copy with all enclosures is forwarded to the Judge Advocate General.

0812 SPECIAL CONSIDERATIONS PERTAINING TO RESERVISTS

See section 0911 of this Manual.

0813 RELATIONSHIP TO DISCIPLINARY ACTION

An adverse determination as to misconduct or line of duty is not a punitive measure. Disciplinary action, if warranted, shall be taken independently of any such determination. Similarly, a favorable determination as to misconduct and line of duty does not

incurrence, or aggravation of an injury or disease that the member may have. See section 0306.

(d) Any statement, record, or other evidentiary matter considered by the convening authority shall be made available for inspection by the member;

(e) The member shall be given full opportunity to present any relevant matter in refutation, explanation, rebuttal, or otherwise respecting the incurrence of the injury or disease. A reasonable period of time shall be provided to the member for this purpose.

(f) The member shall be provided a Privacy Act statement in accordance with section 0308 and Appendix A-3-a. A format to document the hearing is contained in Appendix A-8-g and h.

b. *Action by officer exercising general court-martial jurisdiction.* Unless the convening authority is empowered to convene general courts-martial, the record or report shall be forwarded to an officer empowered to convene general courts-martial having a judge advocate attached to his command. This officer may take any action on the report that could have been taken by the convening authority. With respect to conclusions concerning misconduct and line of duty, he shall indicate his approval, disapproval, or modification of such conclusions unless he returns the record for further inquiry. See section 0210 of this Manual. A copy of this action shall be forwarded to the commanding officer of the member concerned so that appropriate entries may be made in his service and medical records. Reviewing authorities subsequent to the officer exercising general court-martial jurisdiciton need neither comment nor record approval or disapproval of the prior actions concerning line of duty and misconduct.

0816 RELATION TO SAFETY INVESTIGATIONS

Safety investigations and reports required by OPNAVINST 5102.1 are separate and independent of investigations and reports under the JAG Manual.

0817 CHECK LIST FOR FACT-FINDING BODIES

The following is provided as a convenient check list of matters which should be included (as applicable) in any report of a fact-finding body appointed to inquire into and make recommendations concerning misconduct and line of duty under the provisions of this chapter.

a. The complete name, grade or title, service or social security number, service or occupation, station or residence of all persons, military and civilian, killed or injured as an incident of the event under investigation. See section 0308 for advice required to be given by the Privacy Act.

b. All facts leading up to and connected with an injury, disease, or death.

c. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquests or medical examiners' reports, and pathological, histological, and toxicological studies.

d. Complete information concerning the site and terrain at which the incident in question occurred; and photographs, maps, charts, diagrams, or other exhibits which may be deemed helpful to a complete understanding of the incident.

e. All pertinent facts with respect to the duty, leave, liberty or unauthorized absence status of an individual at the time of the incident resulting in his injury or death.

f. When the person involved is a member of a reserve component of the Navy or Marine Corps, complete information as to his status in relation to extended active duty, active duty for training, or inactive duty training (or travel to and from such duty) at the time of the incident.

g. Complete information as to the nature and extent of all injuries to naval personnel and the place and extent of any hospitalization resulting therefrom. Include costs when civilian facilities are used.

h. When relevant, evidence regarding the state of alcohol, drug, or fumes, gas, or vapor intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident. Evidence as to the individual's general appearance and behavior, his rationality of speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be obtained and recorded. Efforts shall be made to determine the quantity and nature of the intoxicating agent used and the period of time over which used by the person. Results of any blood, breath, urine, or tissue test for the intoxicating agent should also be obtained and submitted as exhibits.

i. When material, evidence regarding the mental competence or impairment of the deceased or injured person. In all cases of suicide or attempted suicide, all possible evidence bearing on the mental condition of the deceased or injured person shall be obtained. This will include all available evidence as to his social background, his actions and moods immediately prior to the suicide or the suicide attempt, any troubles which might have motivated the incident, and any pertinent examinations or counseling by specially experienced persons.

j. Documentation evidencing that each enclosure containing personal information solicited from an individual is in compliance with the Privacy Act of 1974. See section 0308 and Appendix A-3-a.

k. Documentation that statements solicited from an injured service member respecting the incurrence or aggravation of his disease or injury are in compliance with section 0306.

(2) The individual is free from fault or negligence if:

(a) There is no direct evidence that fault or negligence on his part was the proximate cause of the loss, and

(b) There is no circumstantial evidence (including an established pattern of carelessness in dealing with funds entrusted to him) which raises a strong inference that fault or negligence on his part was the proximate cause of the loss.

(3) "Fault" is defined as conduct or behavior evidencing bad faith, mismanagement, or neglect of care, or as performance resulting from inattention, dereliction, or perversity.

(4) "Negligence" is defined as conduct which fails to conform to the standard of care which a reasonable, prudent, accountable person would have exercised under the same or similar circumstances. Acts or omissions which, without good justification, deviate materially from duties imposed by regulations or from customary and normal disbursing, collection, or safeguarding procedures or standards would ordinarily constitute negligence for the purpose of the statute involved.

(5) A "proximate cause" is defined as an act or omission which has the direct and foreseeable consequence of producing the loss or creating conditions in which the loss could occur, and without which the loss would not have occurred.

f. *Distribution.* After action by the convening authority, the completed record or report shall be forwarded in accordance with section 0211b, except:

(1) In a case of a loss or deficiency of disbursing funds or documents, the Commander, Navy Accounting and Finance Center should be the last via addressee; and

(2) In a case of loss or deficiency of government property or of the funds derived from the sale of property, the Commandant of the Marine Corps (Code LA); the Chief, Bureau of Medicine and Surgery; or the Commander, Naval Supply Systems Command, as appropriate, should be the last via addressee.

0910 CLAIMS FOR OR AGAINST THE GOVERNMENT

a. *General.* A fact-finding body ordered to inquire into a certain incident may, if a claim or possible claim for or against the Government is involved in the same incident, be ordered to include in its inquiry those considerations required by Chapter XX, General Claims Regulations; Chapter XXI, Personnel Claims Regulations; or Chapter XXIV, Medical Care Recovery Act Claims Regulations. In such case, the separate investigation required by those claims regulations need not be made. This authority to combine the claims investigation with an inquiry or investigation ordered for other reasons is not to be construed as a mandatory directive. A separate claims investigation may always be ordered in the discretion of the commanding officer of the command concerned. For responsibility for ordering an investigation in situations where a claim for or against the Government is involved, see chapters XX through XXIV.

b. *Procedure when claims matters are involved.* When a JAG Manual investigation is directed to include a claims investigation, the fact-finding body should be guided, in general, by the provisions of chapters XX through XXIV, as appropriate.

c. *Action on record.* When an investigative body has acted in a combined capacity, the action on the record by the convening authority shall also include the matter required by chapters XX through XXIV, as appropriate.

d. *Forwarding record.* If the exclusive purpose for the convening of the investigation was the handling of a claims matter, the investigative report shall be forwarded in accordance with the provisions of the appropriate claims regulations as set forth in section 2008. However, if the investigation was not ordered solely to inquire into a claims matter, the investigative report should be forwarded according to the procedures outlined in section 0210a with a copy being provided to the naval legal service office that will handle any claims aspects. The copy of the record forwarded for claims adjudication purposes should contain the originals of all claims forms filed, supporting evidence, and any other items dealing exclusively with, and required for, the adjudication of the claims. The forwarding endorsement should contain a notation indicating that the original claims material was forwarded in that manner.

e. *Claims arising in foreign countries.* Claims which arise in foreign countries should be handled under Chapter XX, General Claims Regulations, Chapter XXII, Foreign Claims Regulations, or pursuant to applicable treaties or other international agreements, and reference should be made in the appointing order to these sources, as appropriate, for guidance in conducting the investigation.

f. *Sonic booms.* A Navy or Marine Corps aviation activity receiving notice that a sonic boom has occurred within the United States, regardless of whether damage has been reported, will immediately undertake an inquiry to determine whether a military aircraft could have been the cause of such disturbance. The aviation activity nearest to the locality at which the alleged sonic boom occurred will be responsible for such inquiry, which shall include queries to all Navy, Marine Corps, Air Force, Air National Guard, and other military facilities in the area from which supersonic aircraft operate to determine the probable source. A thorough check of all traffic, transient as well as local, is imperative. In the investigation of alleged sonic boom damage, the following guidance is provided:

(1) Every person investigating alleged sonic boom damage should be familiar with *The Sonic Boom*, AFLC, (Air Force Logistics Command) P-85.1.

(2) The principal types of damage complained of are glass and plaster damage. Less frequently, claims are received for damage allegedly caused to brick walls, driveways, concrete foundations, and other major structural elements; however, studies have shown that it is almost impossible for a sonic boom to generate over-pressures of sufficient intensity to cause such structural damage regardless of the altitude at which the aircraft was flown. Whenever questionable items of damage are claimed, the services of a construction engineer or other professionally qualified person should be employed either as investigator or as consultant to the investigator.

(3) Promptness in investigating sonic boom claims by qualified personnel is essential.

(4) The following information should be included in the investigative report, if practicable:

(a) Detailed description of alleged damage.

(b) Photographs of the allegedly damaged building or structure and of the specific area of damage.

(c) Detailed description of the building or structure involved, including significant details of construction, size of rooms, age, and general state of repair.

(d) Detailed examination and description of any alleged plaster damage.

(e) Existence or absence of glass damage in the allegedly damaged building or structure, and whether any other glass damage resulting from the incident was reported and verified.

(f) Whether windows and doors were open or shut at the time of the boom.

(g) Whether any loose objects—such as dishes, glassware, or trinkets—inside the building or structure were moved as the result of the boom.

(h) Existence or absence of similar damage to other buildings in the immediate neighborhood.

(i) Type of surrounding community development; type of construction of buildings or structures in the immediate area; density; etc.

(j) Occurrence or absence of seismic disturbances registered in the locality at the time involved.

(k) Other potential sources of damage, such as heavy truck or rail traffic, explosions or earthquakes, and their distance and direction in relation to claimant's building or structure.

(l) Any unusual weather or climatic conditions which may have affected the building or structure.

CHAPTER XI

ARTICLE 138 INVESTIGATIONS— COMPLAINTS OF WRONGS

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- b. Commanding officer
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- g. Officer exercising general court-martial jurisdiction
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- a. Resolution at lowest level
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- d. Endorsements on complaint
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1108 CONSIDERATION OF THE COMPLAINT BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION

1109 CONSIDERATION OF COMPLAINTS BY OFFICERS SENIOR IN THE CHAIN OF COMMAND TO THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION

1110 ACTION BY THE JUDGE ADVOCATE GENERAL

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1111 REVIEW BY THE SECRETARY OF THE NAVY

- a. Scope
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1101 PURPOSE

To establish procedures for the preparation, submission, and processing of complaints made pursuant to Article 138, Uniform Code of Military Justice. To the extent applicable, the procedures herein are also to be used for the submission of complaints made pursuant to Article 1106, *U.S. Navy Regulations, 1973*. In the case of an Article 1106 complaint, the term "commanding officer" as used in this chapter shall be read as "a person who is superior in rank or command to complainant," and "Article 138, UCMJ" shall be read as "Article 1106, *U.S. Navy Regulations, 1973.*"

1102 STATUTORY PROVISION

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon. Article 138, UCMJ; 10 U.S.C. § 938 (1982).

1103 DEFINITIONS OF TERMS AND PHRASES USED IN THIS CHAPTER

a. *Complaint of wrongs:* a procedure by which a member of the armed forces, either officer or enlisted, solicits relief in writing from an action of his/her commanding officer which the member considers to be without basis or unauthorized, arbitrary and capricious, unfair, discriminatory, or unjust, and which results in a personal detriment, harm, or injury to the complainant that is capable of redress in command channels without resort to trial by court-martial or other disciplinary action.

b. *Commanding officer:* any commissioned officer or warrant officer empowered to impose nonjudicial punishment upon the complainant pursuant to Article 15(b) or (c), UCMJ, and section 0101.

c. *Due application:* a request in writing to the commanding officer for redress of a wrong committed or ratified by that commanding officer.

d. *Respondent:* the commanding officer against whom the complaint of wrongs is made.

e. *Wrong:* any and all actions, except those excluded by subsection 1104c, that may be taken or caused by a commanding officer, under color of his/her federal military authority, resulting in detriment, harm, or injury to a subordinate officer, warrant officer, noncommissioned officer, petty officer, or other enlisted person, which are without substantial basis or are unauthorized, arbitrary and capricious, unfair, discriminatory, or unjust, and which are personal to the complainant and are properly capable of redress in command channels without resort to trial by court-martial or other disciplinary action.

f. *Redress:* any lawful action taken by the commanding officer, the officer exercising general court-martial jurisdiction, or any officer in the chain of command (*see* subsection 1105c) which restores to the complainant any rights, privileges, property, or status he/she would have been entitled to had the wrong not occurred.

g. *Officer exercising general court-martial jurisdiction:* the officer (or successor in command) next superior in the chain of command exercising general court-martial jurisdiction over the respondent at the time of the alleged wrong except in cases forwarded to the Assistant Secretary of the Navy (M&RA) pursuant to subsection 1105b. For purposes of this chapter, when the Chief of Naval Operations or the Commandant of the Marine Corps is the next superior officer in the chain of command exercising immediate general court-martial jurisdiction over the respondent, the Vice Chief of Naval Operations or the Assistant Commandant of the Marine Corps, respectively, shall take action on the complaint in accordance with section 1108, unless the complaint is untimely or is not cognizable under Article 138, UCMJ, in which case the Assistant Vice Chief of Naval Operations/Director of Naval Administration or the Chief of Staff, Headquarters Marine Corps, respectively, shall take action on the complaint.

h. *Examination into a complaint:* an inquiry into all facts material to the complaint. This inquiry may be accomplished in whatever manner deemed appropriate by the officer exercising general court-martial jurisdiction. (*See* subsection 1108d.)

i. *True statement of that complaint, with the proceedings had thereon:* a report to the Secretary of the Navy by the officer exercising general court-martial jurisdiction in the format prescribed in subsection 1108*l*. The statement submitted to the Secretary *must be signed personally* by the officer exercising general court-martial jurisdiction, or, in the absence of such officer, by the officer *officially acting* in that capacity, and the signature block should so indicate.

1104 POLICY

a. *Resolution at lowest level.* It is the policy of the Department of the Navy to resolve complaints of wrongs at the lowest possible level of command and to provide administrative procedures to effect such resolution. Article 138, UCMJ, places the primary responsibility for the resolution of complaints of wrongs upon the officer exercising general court-martial jurisdiction over the respondent (as defined in subsection 1103g).

b. *Wrongs which may be redressed.* The wrong may consist of either affirmative action or passive inaction by complainant's commanding officer (as defined in subsection 1103b) which affects the complainant directly and personally.

c. *Complaints which are not cognizable.* Acts affecting complainant which are not initiated or ratified by complainant's commanding officer are not cognizable under Article 138, UCMJ. A complaint concerning general policies of the Department of the Navy is not cognizable under Article 138, UCMJ. Accordingly, complaints protesting provisions of instructions, notes, or other documents promulgating policies having general applicability to servicemembers or to a defined subclass thereof, cannot be brought against the departmental officers responsible for promulgating the policies. Collateral attacks on nonjudicial punishment proceedings, court-martial proceedings, and administrative discharge proceedings are not cognizable under Article 138, UCMJ. A complaint concerning the proceedings, findings, or final actions of boards convened under 10 U.S.C. §§1181 through 1183, or of the Board for Correction of Naval Records, is not cognizable under Article 138, UCMJ. A complaint lodged for the purpose of seeking disciplinary action against another is not cognizable under Article 138, UCMJ. A complaint lodged against an officer exercising general court-martial jurisdiction (as defined in subsection 1103g) for failure to resolve properly an Article 138 complaint, other than on the basis of failure to forward a complaint, does not constitute a wrong cognizable under Article 138, UCMJ, inasmuch as Article 138 itself provides that such actions by the officer exercising general court-martial jurisdiction are reviewable by the Secretary directly.

The determination as to whether a complaint is cognizable under Article 138, UCMJ, is to be based upon a review of the substance of the complaint; the fact that the complaint on its face falls within the parameters of Article 138 and this chapter is not to be dispositive.

d. *Complaints seeking changes in military records.* A complaint seeking changes in military records, such as, officer fitness reports or enlisted performance evaluations, is cognizable under Article 138, UCMJ, only if the records sought to be changed have not become final. Such records are final 90 days after a servicemember knows of the record's submission for entry into the appropriate record or one year after submission for entry into the appropriate record, whichever is earlier. The time period commencing when complainant requests a record change from his/her commanding officer, in accordance with 1106b, and concluding when complainant receives notification from his/her commanding officer of the disposition of his/her request, will not be counted in computing the running of the aforementioned periods required for that record to become final.

1105 JURISDICTION

a. *Who may complain.* The complainant must be a member of the armed forces on active duty at the time the complaint is made, except that an inactive duty reservist who is facing involuntary recall may submit a complaint which involves such involuntary activation.

b. *Who may be the subject of a complaint.* Any commanding officer, as defined in subsection 1103b, may be the respondent to a complaint of wrongs. In cases of complaints by individuals against the actions of the Chief of Naval Operations, the Commandant of the Marine Corps, or other officers at the departmental level who do not report to the Chief of Naval Operations or the Commandant of the Marine Corps, the complaint shall be addressed to the Assistant Secretary of the Navy (M&RA) and forwarded via the chain of command. Neither the Secretary of the Navy, nor any of his/her assistants or deputies, may be the subject of a complaint of wrongs.

c. *Who shall consider the complaint.* With the exceptions set forth in subsection b above, jurisdiction to examine into complaints, take action thereon, and forward the requisite report of proceedings, which shall consist of a statement and/or report of findings and the reasons therefor, in accordance with section 1108, lies initially with the officer exercising general court-martial jurisdiction over the respondent (as defined in subsection 1103g). Where such officer cannot effect the necessary redress, he/she shall act in accordance with subsection 1108h. Regardless of who ultimately takes action to redress the wrong, primary jurisdiction over the complaint and the concomitant primary responsibility for forwarding the report of the proceedings to the Secretary of the Navy remains vested in the lowest-echelon officer in the chain of command exercising general court-martial jurisdiction over the respondent, except where original and final action to resolve the complaint is taken at the departmental level. (*See* subsection 1108*l*.) If the respondent in command at the time of the alleged wrong detaches prior to the submission of the complaint, the complaint will be forwarded to the officer who was exercising general court-martial jurisdiction over such respondent at the time of the alleged wrong, or to that officer's successor in command. If a complainant has detached prior to the submission of a complaint, the complaint will be forwarded, via the complainant's new commanding officer, to the officer exercising general court-martial jurisdiction over the respondent. If both the respondent and the complainant have detached prior to submission of the complaint, the complaint will be forwarded, via the complainant's new commanding officer, to the officer who was exercising general court-martial jurisdiction over the respondent at the time of the alleged wrong, or to that officer's successor in command.

In a case in which the complaint is forwarded to the Assistant Secretary of the Navy (M&RA) for resolution, pursuant to subsection 1105b, the Assistant Secretary of the Navy (M&RA) shall act, with respect to that complaint, as the officer exercising general court-martial jurisdiction.

d. *Review of complaints by area coordinators.* An area coordinator will act as the officer exercising general court-martial jurisdiction when he/she is in fact the officer exercising general court-martial jurisdiction over the respondent (as defined in subsection 1103g). In addition, an area coordinator may handle Article 138, UCMJ, complaints if specifically authorized to do so by the officer exercising general court-martial jurisdiction over the respondent. Whether it is appropriate for the area coordinator to handle Article 138, UCMJ, complaints in such situations is to be determined on a case by case basis by the officer exercising general court-martial jurisdiction over the respondent, considering such factors, *inter alia,* as the geographic location of the respective commands; time delays, mandated by operational commitments, required to investigate adequately the complaint; the relative burden of assuming investigative cognizance over complaints; the relative seniority of the respondent and the area coordinator; and familiarity with the subject matter of a specific complaint.

e. *Authority of intermediate superior officers to whom a complaint is forwarded.* An intermediate superior officer, junior to the officer exercising general court-martial jurisdiction to whom a complaint is forwarded, may comment on the merits of the complaint and may add pertinent evidentiary material to the file, and may also grant the redress, if empowered to do so, noting such action on the record. In any event, he/she shall then promptly forward the complaint and allied papers to the officer exercising immediate general court-martial jurisdiction over the respondent.

1106 PROCEDURE

a. *Time limitations.* A complaint must be submitted within a reasonable time after the occurrence of the alleged wrong. In the absence of unusual circumstances, a complaint initiated more than 90 days after discovery by the complainant of the alleged wrong may be considered to be untimely. The period during which the complainant's application to his/her commanding officer, pursuant to subsection 1106b, is being considered by the latter is not to be included in this 90-day period. The officer exercising general court-martial jurisdiction may deny relief solely on the ground that the complaint was not filed in a timely manner if he/she determines that unusual circumstances did not exist, or if complainant does not allege unusual circumstances in his/her complaint. Such action, however, does not obviate the requirement for forwarding the report of proceedings to the Secretary of the Navy.

b. *Due application to commanding officer.* The essence of a complaint properly cognizable under Article 138, UCMJ, is a wrong, coupled with the commanding officer's refusal or failure to redress such wrong. Accordingly, the commanding officer must be afforded the opportunity to redress the wrong prior to the filing of any subsequent action pursuant to Article 138, UCMJ. This should be accomplished by means of a written request for redress. The respondent will act upon the application in a timely manner (ordinarily within 30 days) and will notify the complainant of such action.

c. *Form of complaint (see Appendix A-11-a).* The complaint shall:

(1) Be in writing and be signed by the complainant, with the truthfulness of such complaint sworn to by the complainant, in the format prescribed in Appendix A-11-a and before a person authorized by law to administer oaths;

(2) Be addressed via the respondent to the appropriate officer exercising general court-martial

jurisdiction, except in cases falling within the scope of subsection 1105b, in which case the complaint shall be addressed via the respondent to the Assistant Secretary of the Navy (M&RA);

(3) Include a statement that it is made pursuant to the provisions of Article 138, UCMJ;

(4) Clearly identify the respondent (and only one respondent) by name and title;

(5) State that the complainant, pursuant to subsection 1106b, has previously made due application for redress to his/her commanding officer or to the superior officer in the chain of command who committed the wrong, and that he/she was denied such redress (a copy of the previous request for redress and the response thereto, or the reasons for their unavailability, should be included);

(6) Identify the specific action which gave rise to the wrong alleged and the detriment, harm, or injury suffered; set forth all of the relevant facts applicable to the grievance; and, include all available evidence (including documents, affidavits, and statements of witnesses) which supports the complaint or provides other pertinent information;

(7) Set forth the specific relief desired.

(8) If the complaint is untimely (*see* subsection 1106a), state the unusual circumstances resulting in the untimeliness.

d. *Endorsements on complaint.* Endorsers should, subject to applicable security of classified material instructions, ensure that the complainant is provided copies of all endorsements.

e. *Withdrawal of complaint.* A complainant may withdraw his/her complaint at any time. The withdrawal must be made in writing, and signed by the complainant. When this occurs, the complaint, with the withdrawal attached, will be filed without further action by the officer exercising general court-martial jurisdiction. This file will be maintained for two years from the date of withdrawal of the complaint.

f. *Joinder.* The complaint may not be joined with complaints of other individuals. Similarly, each complaint shall seek redress for the action of only one respondent. If the complainant considers himself/herself wronged by more than one respondent, the wrongs of each respondent shall be the subject of a separate complaint. Improperly joined complaints will be returned to the complainants. The officer exercising general court-martial jurisdiction may deny relief solely on the ground that the complainant has failed to cure any improper joinder of complaints after having been notified of this procedural deficiency and afforded the opportunity to correct it. (*But see* subsection 1108i.)

g. *Participation by complainant in proceedings on complaint.* Article 138, UCMJ, does not give a complainant a right to participate in actions taken on his/her complaint after its submission (except as provided in subsection 1108c). He/she may be named as a party, if appropriate, and accorded the rights of such, however, in any formal inquiry conducted pursuant to subsection 1108d. He/she may likewise be requested to submit clarifying or explanatory statements for consideration in connection with his/her complaint. All evidentiary matter, including affidavits, statements, and documentary evidence, which is available to the complainant should be submitted by the complainant to assist in expediting the inquiry.

1107 LEGAL ADVICE

A judge advocate when reasonably available may be afforded to complainant and may provide legal advice concerning the submission of an Article 138, UCMJ, complaint. Such advice may include an opinion whether an Article 138, UCMJ, complaint is an appropriate procedure under the circumstances. If it is not, advice may be given concerning the appropriate law or regulation, if any, under which the member may properly proceed in his/her quest for appropriate relief. This section is not to be construed as requiring the assignment of a judge advocate to represent a complainant who is not named as a party to a formal investigation, nor to create any right on the part of a complainant to individual military counsel. A complainant may retain civilian counsel at his/her own expense to assist him/her in connection with the submission of a complaint.

1108 CONSIDERATION OF THE COMPLAINT BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION

a. Upon receipt of the complaint, the officer exercising general court-martial jurisdiction (as defined in subsection 1103g) shall initially review the complaint to ensure that it is within the scope of Article 138, UCMJ (*see* subsections 1104b and c), is timely (*see* subsection 1106a), and is complete. If it is determined that the complaint is not one which lies within the scope of Article 138, UCMJ, the complaint shall be returned to complainant with an explanation as to why the complaint is outside the scope of Article 138, UCMJ. If the complaint is outside the scope of Article 138, UCMJ, and there are other channels available which are appropriate for resolution of the alleged wrong, the complainant should be advised of these channels and the methods by which to proceed. In such cases, a copy of the complaint and the letter returning the complaint to the complainant shall be forwarded to the Secretary of the Navy (Judge Advocate General). If it is determined that the complaint is incomplete or otherwise deficient, the complaint shall be returned with an explanation of the manner in which it is incomplete or otherwise deficient. In all such cases, the complainant shall be advised that he/she may have the complaint forwarded despite its deficiency, if he/she chooses to do so, and shall be advised that, unless the complaint is resubmitted to the officer exercising general court-martial jurisdiction within 30 days after being returned, no further action will be taken. If the complaint is not timely, and the officer exercising general court-martial jurisdiction concludes that insufficient justification for the delay has been provided by the complainant, he/she may deny the complaint solely on the ground that it was untimely. In such cases a report must be made to the Secretary.

b. If a complainant, upon being advised that the complaint is deficient due to improper joinder (*see* subsections 1106f and 1108i), fails to cure the improper joinder, the officer exercising general court-martial jurisdiction may deny relief solely on the ground that there has been an improper joinder of complainants or respondents. In such cases, a report must be made to the Secretary.

c. Prior to taking final action on a complaint received, the officer exercising general court-martial jurisdiction shall ensure that the complainant is provided with a copy of all endorsements and enclosures forwarded with the complaint as well as adverse evidence developed during the course of his inquiry which was not raised in earlier endorsements or enclosures, and shall afford the complainant the opportunity to rebut any matter of an adverse nature contained therein. Provision of this information shall be subject to applicable security of classified material instructions.

d. If the complaint is within the scope of Article 138, UCMJ, and is timely and complete, the officer exercising general court-martial jurisdiction over the respondent shall cause an appropriate inquiry to be conducted. The extent and nature of such inquiry is discretionary with the officer exercising general court-martial jurisdiction, and will depend upon the seriousness of the allegations, the available time, and the exigencies of the service. Regarding participation by the complainant in this inquiry, see subsection 1106g. Regardless of the form of the inquiry conducted, see section 0308 to determine whether Privacy Act statements are required. Certain complaints may involve matters which are quite complex or technical in nature, the resolution of which requires expert evaluation. In these instances, the officer exercising general court-martial jurisdiction may seek such expert evaluation from other naval organizations or commands.

e. Within his/her discretion, the officer exercising general court-martial jurisdiction may delay his/her examination into a complaint if there is pending a court-martial, an appeal of the findings or sentence of a court-martial, or a complaint in another case, the consideration of which is reasonably likely to result in clarification of the issues or redress of the alleged wrong. Such delay should not ordinarily extend beyond 10 days after completion of the action in the related court-martial, appeal, or other case, or beyond 90 days from the date of the receipt of the complaint by the officer exercising general court-martial jurisdiction, whichever is earlier. In all other cases, the officer exercising general court-martial jurisdiction shall complete his/her action on the complaint within 60 days of the date of receipt thereof, in the absence of unusual circumstances. In the event of a delay caused by unusual circumstances, the report to the Secretary shall contain a description of such circumstances and an explanation of the delay caused thereby.

f. The officer exercising general court-martial jurisdiction may not refuse to act on a complaint on the ground that other avenues of redress may exist; e.g., request mast procedures established by article 1107, *U.S. Navy Regulations, 1973,* the Board for Correction of Naval Records, etc.

g. Except in those cases wherein the original complaint is addressed to the Assistant Secretary of the Navy (M&RA) (*see* subsection 1105b), the officer exercising general court-martial jurisdiction has primary responsibility for acting on the complaint. Such responsibility may not be delegated to a subordinate command or individual. The statement submitted to the Secretary *must be signed personally* by the officer exercising general court-martial jurisdiction, or, in the absence of such officer, by the officer *officially acting* in such capacity, and the signature block should so indicate. (*See* subsection 1103i.)

h. If the officer exercising general court-martial jurisdiction finds that redress is warranted and it is within his/her authority to do so, he/she shall grant the redress. If the officer exercising general court-martial jurisdiction has the authority to grant the redress warranted but cannot actually effect it, such as in the case of removal and/or substitution of enlisted performance evaluations and officer fitness reports of which he/she is not the custodian, he/she shall forward the file via the officer who can effect the redress, such as the custodian of the records, directing the specific relief to be granted, and that officer shall take the action directed by the officer exercising general court-martial jurisdiction.

i. In the event that the complainant has challenged a recommendation which was forwarded to another officer for final action, *e.g.*, to Commander, Naval Military Personnel Command, or the Commandant of the Marine Corps, such as in the case of a change of designator or military occupational specialty (MOS), and that action has been completed, the file shall be forwarded by the officer exercising general court-martial jurisdiction over the respondent, via the officer who acted on the respondent's recommendation, to the officer exercising general court-martial jurisdiction over the latter officer. In such event, the officer exercising general court-martial jurisdiction over the officer who acted upon the respondent's recommendation will only review the decision of the officer who acted on the recommendation of the respondent, taking into consideration the findings of the officer exercising general court-martial jurisdiction over the respondent, and grant or deny redress, or take any other appropriate action not inconsistent with this chapter. Although the effect of this subsection is to provide for two Article 138 actions, based on one initial complaint, this is not considered to be an improper joinder in that the second action is based upon the first action and it would be unduly burdensome to require a second complaint in such circumstances.

j. If the officer exercising general court-martial jurisdiction determines that the complaint is without merit, he/she shall deny redress.

k. The officer exercising general court-martial jurisdiction shall advise the complainant, in writing, of the action he/she has taken on the complaint. The letter will specifically indicate which of the complainant's allegations were considered to have merit and which were without merit and will either detail the relief granted, if any, or specifically deny the relief sought.

l. Except in those cases in which original action on the complaint is taken at the departmental level, the officer exercising general court-martial jurisdiction is responsible for forwarding a report of the proceedings to the Secretary of the Navy. Such report shall be forwarded to the Secretary of the Navy (Judge Advocate General). Marine Corps activities shall, in addition, include the Commandant of the Marine Corps (Code JA) as a via addressee. The report shall be in the format described in Appendix A-11-b.

1109 CONSIDERATION OF COMPLAINTS BY OFFICERS SENIOR IN THE CHAIN OF COMMAND TO THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION

Officers senior in the chain of command to the officer exercising general court-martial jurisdiction over the respondent and who themselves exercise general court-martial jurisdiction may require subordinate commanders to submit the report required by 1108l via their headquarters. Such officers may make comments or recommendations concerning the report to the Secretary, but they are not empowered to modify in any manner the action of the officer exercising general court-martial jurisdiction over the respondent, regardless of whether such action would inure to the benefit of the complainant.

1110 ACTION BY THE JUDGE ADVOCATE GENERAL

a. *When complaint has been acted upon.* Upon receipt of a complaint which has been acted upon by the officer exercising general court-martial jurisdiction, the Judge Advocate General shall:

(1) (a) Ensure that there has been substantial compliance with Article 138, UCMJ, and this chapter; or,

(b) Return the file to the officer exercising general court-martial jurisdiction for additional investigation or further action.

(2) Forward the file to the Assistant Secretary of the Navy (M&RA) with such evaluations and recommendations as the Judge Advocate General may consider appropriate.

b. *When complaint is addressed to the Assistant Secretary of the Navy (M&RA) for resolution.* When a complaint falls within the scope of section 1105b, and is forwarded for resolution at the departmental level, the Judge Advocate General shall provide such legal advice to the Assistant Secretary of the Navy (M&RA) as may be required.

1111 REVIEW BY THE SECRETARY OF THE NAVY

a. *Scope.* The action of the officer exercising general court-martial jurisdiction is subject to review by the Secretary of the Navy. This review authority may be delegated to the Assistant Secretary of the Navy (M&RA), except when he/she acts as the officer exercising general court-martial jurisdiction. The standard for review is whether the officer exercising general court-martial jurisdiction abused his/her discretion.

b. *Action where redress was granted.* The Secretary of the Navy may set aside actions favorable to the complainant only if such redress was beyond the statutory or regulatory authority of the officer granting the redress.

c. *Action where redress was denied.* The Secretary of the Navy may direct that further proceedings be had in the matter, or may direct that all or a portion of the requested redress be granted.

d. *Notification to complainant.* Upon review of the resolution of a complaint by the officer exercising general court-martial jurisdiction, the complainant shall be notified by the Secretary of the Navy whether such resolution is determined to be correct in law and fact and whether further action on the complaint will be taken.

e. *Finality.* Action on a complaint shall be considered final, and the complainant will have exhausted his/her administrative remedy under Article 138, UCMJ:

(1) When the action taken by the Assistant Secretary of the Navy (M&RA) indicates that the action of the officer exercising general court-martial jurisdiction is approved.

(2) If the file is referred to another command or office for corrective action or for further investigation, when the directed action has been completed and the report of such completed action has been reviewed by the Assistant Secretary of the Navy (M&RA).

(3) When no action is taken by the Assistant Secretary of the Navy (M&RA) within 90 days of receiving notification that the officer exercising general court-martial jurisdiction has returned the complaint to the complainant as not cognizable.

(4) When no action is taken by the Assistant Secretary of the Navy (M&RA) within 90 days of receiving the report of the action of the officer exercising general court-martial jurisdiction, or within 90 days of receiving the report of action described in the preceding subsection. (This subsection is not applicable to complaints forwarded to the Assistant Secretary of the Navy (M&RA) for original action pursuant to subsection 1105b.)

(5) When no action is taken by the Secretary of the Navy within 90 days of receiving the report of original action taken by the Assistant Secretary of the Navy (M&RA) as the officer exercising general court-martial jurisdiction.

f. *Other remedies.* Exhaustion of remedies under Article 138, UCMJ, has no bearing upon remedies which may be available under other statutes or regulations, including the Board for Correction of Naval Records and remission-of-indebtedness procedures.

g. *Delegation.* Actions taken pursuant to this chapter by the Assistant Secretary of the Navy (M&RA) or Judge Advocate General shall be as effective as if done personally by the Secretary of the Navy. The Assistant Secretary of the Navy (M&RA) may delegate any of the responsibilities under this chapter to the Judge Advocate General.

clocks, and discrepancies noted. Where a fathometer was in use, the same applies.

f. Radar records have assumed an increasing importance in recent years by reason of court decisions holding that a vessel is chargeable with the knowledge which her radar would have disclosed if it had been efficiently used. Consequently, radar records or logs must be carefully preserved. If a vessel's radar was in operation but no written record was being maintained, a detailed statement of the radar operator should be immediately prepared, with particular emphasis on times, ranges, and bearings.

g. Not all original logs and records will be relevant in every case. Although all such records would probably be of importance in a major collision, some of them would contain no information of value in a case of minor damage to a shore structure. Depending on the circumstances of the particular case, the following are among the original records which must be preserved and forwarded to the Admiralty Division:

(1) Quartermaster's Notebook.
(2) Smooth Deck Log.
(3) Bell Book.
(4) Engineering Log.
(5) Chart in use.
(6) Bearing Book.
(7) Magnetic Compass Record.
(8) Deviation data, azimuth records, and course recorder record.
(9) CIC Logs.
(10) Radar Logs.
(11) DRT plot (place or course recorder).
(12) Radar Plot.
(13) Communication and Signal Logs.
(14) Voice Radio Log.
(15) Night Order Book.
(16) Fathometer Record.

h. Although photographs do not constitute original documentary data, they are an extremely valuable adjunct to an investigation. The Department of Justice has repeatedly emphasized their value in litigation. In collision cases, photographs which indicate the angle of collision and extent of damage are most valuable. They are also essential in personal-injury litigation where there is an issue of alleged defects in a vessel's tackle, gear, or appurtenances. Many ships have an officially designated ship's photographer. In peacetime, officers and crew members are normally permitted to retain cameras. After a collision, the ship should be canvassed for persons who may have taken relevant pictures.

i. The value of a photograph increases with its nearness in time to the incident involved. Where photographs are taken there must be recorded on the reverse side of the prints or elsewhere the hour and date the photographs were taken; a detailed description of the location or area photographed; the name, rate, and social security number (SSN) of the photographer; and the names and addresses of the persons present when the photographs were taken. Care should be taken to preserve the negatives. These requirements are important in order that the photographs can be properly authenticated and identified by witnesses for possible use in litigation.

1210 SURVEYS

a. Surveys both of a naval vessel and of a privately owned vessel involved in an incident are absolute essentials in the Navy's admiralty-claims procedure. The requirement applies not only to collisions but also to any maritime incident involving potential Government liability for property damage as outlined in section 1203, *supra*, and to damage caused by a privately owned vessel to Navy property as outlined in section 1205, *supra*.

b. The Navy's survey procedure follows a practice of long standing in the commercial maritime field. It is designed to eliminate burdensome and difficult questions of proof of damage. The primary purpose of a survey is to eliminate later controversy as to the items of physical damage caused by a collision. Failure to afford opposing interests an opportunity to survey collision damage places a very heavy burden of proof on the party later seeking to establish such damage. *See Patton-Tully Transportation Company v. Barrett*, 37 F. 2d 516, 1930 A.M.C. 970 (C.A. 6 1930); *THE WESTCHESTER*, 254 F. 576 (C.A. 2 1918), *Luria Bros. & Co., Inc. v. Assoc. Metals and Minerals Corp.*, 1973 A.M.C. 433, 437 (N.Y.C.C. 1972).

c. The survey practice discussed here is the formal, technical, joint survey held by representatives of the two (or more) parties involved. It is not a mere *ex parte* appraisal, such as may be used in determining the extent of damage in the Navy's investigatory procedure or in connection with the disposal of naval material. Each party normally appoints its own surveyor who, with the other surveyors, examines the damage and attempts to reach agreement as to the extent of damage resulting from the casualty. The survey report lists the items of damage and the recommended repairs. Where all parties are in agreement, the practice is that all surveyors sign the report in order to record their concurrence as to the items of physical damage. Surveyors normally sign without prejudice as to liability. If there is disagreement as to certain points, those points are specifically noted. No surveyor subscribes to any statement in the survey report with which he is not in accord.

d. It is imperative that surveys be held as soon after the collision or casualty as possible. The Navy's survey procedure is accomplished under a contract between the Navy and the United States Salvage Association, Inc., a nonprofit service organization, primarily representing U.S. marine underwriters. It has contract arrangements in other foreign areas so that its representation is worldwide.

e. The Admiralty Division of the Office of the Judge Advocate General is the only office having authority to request surveys under the Salvage Association contract. Since it is imperative that surveys be conducted as soon after the collision or casualty as possible, immediate reporting of the collision or casualty, in accordance with the provisions of section 1206 of this Chapter, is necessary in order to be able to arrange for the survey. The Navy does not have authority to employ commercial surveyors outside the Salvage Association contract; all services of this nature must be performed under the contract.

f. Depending on the identity of the foreign sovereign involved in the particular incident, admiralty survey procedures may apply to collisions between U.S. Navy ships and foreign naval or public ships. In cases where claims can be legally asserted, it has been determined for policy reasons that, in certain special situations, joint survey exchanges will not be held without prior specific approval. OPNAV Instruction 3040 series establishes policy in such cases. Where doubt exists, advice should be sought from the Judge Advocate General (Admiralty Division).

1211 WAIVERS

a. This section deals with collisions between vessels, both of which are owned by the United States and operated by different Government departments. It also applies to damage to property of other Government departments caused by naval vessels. Such claims are subject to waiver. The existence of the waiver is based upon decisions of the Comptroller General to the effect that appropriations of one Government department are not available to pay claims of another. This principle has also been applied by the Comptroller General in a decision involving a Government corporation which obtained its revenues from its operations rather than from Congressional appropriations. *See*, *Inland Waterways Corporation and Defense Plant Corporation*, 25 Comp. Gen. 49 (1945).

b. Where it appears that only Government interests are involved, investigation with respect to civil liabilities and surveys is not required. The status of the respective vessels is confirmed by correspondence between the Admiralty Division and the other Government agency, and the existence of a waiver is made a matter of record. It is as important to avoid unnecessary labor and expenditure in matters subject to waiver as it is to observe the necessary requirements of investigation and survey where there is no waiver. If there is any doubt as to the status of the other vessel or property, advice should be requested from the Judge Advocate General (Admiralty Division) by rapid means.

c. The situation as to Maritime Administration vessels may cause some confusion. During World War II, by reason of the chartering arrangements and the waiver clauses contained in the WSA (War Shipping Administration) charter party, collisions between naval vessels and all vessels controlled by the WSA (even if privately owned) were waived. That situation has changed materially, and the mere fact of Maritime Administration ownership is not now conclusive. Many Maritime Administration vessels are now operated under bareboat charter. The bareboat charterer is privately insured, and these situations are treated as if the vessel were privately owned.

d. Only where the vessel is operated for the account of the Maritime Administration under a General Agency Agreement is the claim now subject to waiver. This general statement is subject to a further qualification where a Maritime Administration vessel, operated under General Agency Agreement, damages a Navy shore structure. Such claims are paid by the P&I (protection and indemnity) underwriters of the Maritime Administration vessel and are not waived. The interdepartmental waiver applies only to the marine insurance or hull damage type of claim.

e. In addition to inter- and intradepartmental waiver situations involving United States public vessels only, other incidents involving such vessels and the public vessels of certain foreign Governments may be subject to waiver.

1212 FOREIGN GOVERNMENT CLAIMS

a. A nation's public war vessels are not subject to jurisdictional process in any other nation. The Supreme Court of the United States has applied the same doctrine to foreign Government-owned merchant vessels, *Berizzi Brothers Company v. SS PESARO*, 255 U.S. 216, 1926 A.M.C. 958 (1926). Government-owned vessels are only exempted from the jurisdiction of the United States if they are devoted to the public use or employed in carrying on the operations of the Government; restrictions may be imposed upon the immunity of Government-owned merchant vessels which are employed in competitive commercial transactions. *Republic of Mexico v. Hoffman*, 324 U.S. 30, 1945 A.M.C. 277 (1945).

b. While the courts had traditionally given great deference to Executive Branch policy in deciding the applicability of sovereign immunity, the legislature, by virtue of the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. § 1604 to § 1611, effective January 19, 1977), vested the authority to determine this issue in the judiciary. The legislature additionally intended to codify the then existing "restrictive" theory of sovereign immunity as opposed to the "classical" or "absolute" theory. The restrictive theory of sovereign immunity recognizes the immunity of the sovereign with respect to sovereign or public acts of the state but not with respect to private acts of a commercial nature. *See China National Chemical Import and Export Corporation v. M/V Lego Hualaiue*, 504 F. Supp. 684, 1981 A.M.C. 405 (1981 USDC MD.).

c. The United States has waived immunity from arrest of its merchant vessels in foreign countries but not the immunity from arrest of United States naval vessels. If an attempt were made to arrest a naval vessel in a foreign country, the Department of State, at the instance of the Department of Justice, would be requested to file a suggestion of Government interest, and to obtain release of the naval vessel.

d. During World War II many governments requisitioned their merchant vessels. Litigation between the Allies arising out of collisions of their public vessels, apart from its general undesirability, was impracticable since the vessels were immune from arrest. Accordingly, the United States entered into a series of "knock-for-knock" or waiver agreements with the British, Norwegian, Australian, and Canadian Governments, whereby intergovernmental-maritime claims were waived. The test was the ultimate interest of the government concerned. That is, if the loss was one which the government would ultimately bear, the claim was subject to waiver. Salvage claims and general-average matters were also waived.

e. At the present time there are waiver agreements in effect with the British and Canadian Governments, Maritime Transportation and Litigation Agreement with Great Britain, 4 December 1942, 56 Stat. 1780, E.A.S. 282 and Waiver of Claims Involving Government Ships Agreement with Canada, 15 November 1946, 61 Stat. 2520, T.I.A.S. 1582. Under these agreements, all maritime claims that would otherwise lie between the Governments of the United States on the one hand and of Great Britain and Canada on the other, and which arise out of the operation of the public vessels of these respective Governments, are waived. Such cases do not require, for claims purposes at least, the usual investigation and survey.

f. In addition, waiver is provided for in the North Atlantic Treaty Status of Forces Agreement and in the Status of Forces Agreement with Japan. Under Article VIII of the former, intergovernmental admiralty claims for damage to property owned and used by the armed services of one contracting party caused by a vessel of another contracting party are waived, provided that either the damaging vessels or the damaged property was being used in connection with the operation of the North Atlantic Treaty. Under Article XVIII of the Agreement with Japan, the United States and Japan have similarly provided for mutual waiver of claims for property damage caused by members of their defense forces, provided that either the damaging instrumentality or damaged property was being used for official purposes. Similar waiver provisions are contained in the Status of Forces Agreement between the United States and the Republic of Korea.

g. In those cases where an admiralty claim can legally be asserted against a foreign government in other than the situations described herein, prompt notice and investigation procedures remain the same. For procedures regarding survey, see section 1210 (f) *supra*.

1213 PERSONAL INJURIES

a. Claims for personal injury and death are assuming increasing importance, both with respect to the expanding volume of such litigation and the larger amounts recovered. In many instances, suits have been filed without any prior notice of claim or any previous report of the incident. This is particularly true where injuries to shoreside workers and longshoremen have been involved.

b. As indicated in section 1203, *supra*, claims for personal injury and death suffered on a naval vessel or caused by a naval vessel or by other property under the jurisdiction of the Department of the Navy, or caused by a maritime tort committed by an agent or employee of the Navy, are subject to suit under the Public Vessels Act. Such claims are also within the Navy's settlement authorization. The same requirements of immediate reporting and investigation apply. The exclusive remedy for civilian employees, including officers and seamen on public vessels, is the Federal Employees' Compensation Act, *Johansen v. United States*, 343 U.S. 427, 1952 A.M.C. 1043 (1952); *Petition of United States by Inland Waterways Corp.*, 212 F. Supp. 214 (D.C. La. 1962), aff'd 342 F.2d 799 (5th Cir.), cert. den. 382 U.S. 831 (1965). Injuries to civil service officers and seamen who man MSC vessels are not reported to the Judge Advocate General, but should be reported to the Industrial Relations Division of MSC. However, longshoremen, harbor workers, repairmen, guests, visitors, and dependent passengers are among the categories of persons who may file suit under the Public Vessels Act for their injuries, and it is with these classes of claims that this section is concerned.

c. In all cases of personal injury, after first aid has been rendered, a paramount consideration is immediate physical examination. This examination should be as thorough and detailed as possible under the circumstances. Upon request, a copy of the report of examination, X-rays, photographs, and tests made by the Navy may be furnished to the injured individual. If the injured party declines to submit to a physical examination, this should be made a matter of record by means of a communication addressed to him. Where the exigency of the situation requires, medical treatment in addition to first aid is furnished by the naval vessel or the naval facility involved. Apart from humanitarian aspects, any failure to furnish immediately-required medical service which is not otherwise available would prejudice the defense of a subsequent suit for personal injury.

d. In addition to the usual reports and investigation, any naval vessel on which a person has been injured should have the occurrence entered in her log. Statements should be obtained from all eyewitnesses if possible. Longshoremen and repairmen may be reluctant to give such statements, particularly where one of their fellow workers is involved. In such event, a record should at least be made of the complete names, addresses, and badge numbers of all workmen who saw the casualty, as well as of other members of the group with which the injured man was working. If any naval personnel or Government employees were witnesses, detailed statements should be taken from them.

e. Since liability may be predicated only on negligence of the vessel, a most careful and detailed examination must be made of the locality of the accident. This provides evidence as to the condition of the particular area or apparatus involved for use in possible subsequent litigation. Photographs should also be taken as soon as possible after the accident showing the area where it occurred and the gear or tackle involved. When photographs are taken, notations should be made to permit their identification and to show the circumstances under which they were obtained. The same requirements apply to injuries received by persons ascending or descending a brow, gangway, or accommodation ladder, or to injuries to persons on the dock or pier as a result of events taking place on board the vessel. If the injury has resulted from the failure or giving-way of any of the vessel's gear or equipment, such gear should be carefully preserved where feasible.

f. A trend aimed at expanding Government liability is beginning to emerge in the area of third-party practice. Whereas in direct actions naval personnel and civil service employees traditionally have been held to be barred from suing the Government for personal injuries [the former under the rationale of *Dobson v. United States*, 27 F.2d 807 (2d Cir. 1928), and the latter under the Federal Employees' Compensation Act (5 U.S.C. §§ 8101-8150)], the question of whether the United States may be impleaded by a joint tortfeasor under circumstances where a direct claim would be barred by the foregoing authorities is unsettled. The U.S. Court of Appeals for the Ninth Circuit, in *Wien Alaska Airlines, Inc. v. United States*, 375 F.2d 736 (9th Cir. 1967), and *United Airlines v. Wiener*, 335 F.2d 379 (9th Cir. 1964), has held such claims for noncontractual tort indemnity against the United States to be barred. The Fourth Circuit, however, has adopted the contrary view, apparently permitting plaintiffs to do indirectly what they could not do directly, *Wallenius Bremen G.m.b.H. v. United States*, 409 F.2d 944 (4th Cir. 1969). A similar result may obtain when the United States voluntarily intervenes to recover medical expenses under the Medical Care Recovery Act (42 U.S.C. §§ 2651-53). *Nikiforow v. Rittenhouse*, 319 F. Supp. 697 (E.D. PA 1970).

g. The problem becomes more complex where the cause of action is based on product liability rather than simple tort. Product-liability cases are premised not merely on the theory of simple tort but on concepts of warranty related to the Government's participation in the design phases of manufacture of the product involved.

h. The normal procedures prescribed for reporting and investigating admiralty incidents are adequate for the purposes of handling product-liability cases. The preceding brief discussion of the new emphasis on product-liability cases is intended to bring about an awareness of this area of potential liability and the active investigation of cases which might otherwise, because they involve only civil servant personnel, go without proper investigation.

i. As previously mentioned, persons traveling in naval vessels, other than military or civil service personnel, may maintain a cause of action for injuries sustained on board. Such transportation is usually without benefit of defenses which may be contained in steamship tickets issued by commercial shipping lines. Therefore, the Navy cannot avail itself of contract defenses which may exist in favor of steamship companies in such matters. Without such clauses in the ticket, there is no requirement for immediate notice of claim. The two-year statute of limitations of the Public Vessels Act would normally apply, unless a shorter statute of limitations may be invoked under the doctrine of laches.

j. Personal-injury suits are usually very difficult to defend and recoveries may involve large sums. It is therefore imperative that the following essentials be met:

(1) Immediate medical examination and report of treatment-record results.

(2) Message report to the Judge Advocate General (Admiralty Division) (except in case of minor injury to military dependents, for which air mail will suffice).

(3) Names and addresses of all witnesses and statements if possible.

(4) Examination of the locality and apparatus involved to meet any issue of alleged negligence of the vessel (make record of results).

(5) Photographs of the locality and conditions involved.

(6) Preservation of any gear or equipment which has failed.

(7) Appropriate log entries.

1214 SALVAGE

a. This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. §7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

b. When a naval ship renders salvage assistance, the resulting claim against private interests can also be administratively settled by the Secretary of the Navy pursuant to 10 U.S.C. §7365. Such affirmative salvage claims are reported to and processed by the Assistant Supervisor of Salvage, USN, Rm. 1313, 90 Church St., New York, N.Y. 10007. (*See* NAVSEASYSCOMINST 4740.4 of 14 Mar 1977.) They are referred to the Judge Advocate General (Admiralty Division) only if the Assistant Supervisor of Salvage is unsuccessful in making collection. The Government also has the inherent right to sue in order to enforce its salvage claim. *THE WESTERN HOPE — THE IMPOCO*, 287 F.400, 1923 A.M.C. 82 (S.D.N.Y. 1922); *THE ODENWALD*, 71 F. Supp. 314, 1947 A.M.C. 666 (D.C.P.R. 1947), *aff'd* 168 F.2d 47, 1948 A.M.C. 888 (1948); *UNITED STATES v. BARGE CBC 603*, 233 F. Supp. 85, 1965 A.M.C. 2751 (E.D. La. 1964).

c. Admiralty law gives the crew of a salvaging vessel a share of the salvage award. A civilian crew which assists in salvaging a naval vessel has a cause of action against the Government separate and distinct from that of the vessel owner. Uniformed naval personnel, however, are precluded by administrative policy from maintaining suit for salvage services performed as part of their official duties. In processing affirmative claims, the Supervisor of Salvage asserts claims for the Navy on a per diem basis as owner of the salving vessel, including the services of Navy crew members.

d. The *ODENWALD* case may be regarded as a special situation so far as naval personnel are concerned. In that case, the Secretary of the Navy with Presidential approval directed that suit be filed against the German vessel *ODENWALD* on behalf of the United States and the naval personnel involved. That was an unusual situation, but it did not indicate any departure from general administrative policy. Thus, while civilians who salve a naval vessel have a cause of action against the Government, naval personnel are generally precluded by governmental policy from filing suit for salvage services rendered to commercial vessels.

e. The compensation to which a salvor is entitled generally consists of two parts. First, there is reimbursement of his expenses such as cost of labor and materials expended. Secondly, there is a bonus or a reward, the size of which depends upon many factors and varies from case to case, *THE BLACKWALL*, 77 U.S. 1 (1869). The amount of the award, however, is something less than the salved value of the property. Life is less highly rewarded than property under the American law of salvage; that is, a salvor of life is only rewarded out of the value of property salved. If no property is salved, there is no award. 46 U.S.C. § 729; *PENINSULAR & ORIENTAL STEAM NAVIGATION COMPANY v. OVERSEAS OIL CARRIERS, INC.*, 553 F.2d 830, 1977 A.M.C. 283 (2nd Cir. 1977). Salvage awards are sufficiently liberal so as to encourage others to risk their ships and their lives to save property from the perils of the sea, and not "so much as to encourage unnecessary or exaggerated service." *THE NO. 92*, 252 F. 117 (2d Cir. 1918).

f. The Assistant Supervisor of Salvage, USN, normally presents Navy salvage claims on a per diem basis. This practice of charging a daily rental is a matter of administrative convenience and policy insofar as the Supervisor of Salvage is concerned. In those cases where property is salved, however, that policy does not preclude the Government from asserting its legal right to claim on a salvage-bonus basis. Regulations concerning Navy affirmative salvage claims have been published in the Federal Register and in the Code of Federal Regulations, 32 C.F.R. Part 754.

g. The presence of uninsured Government cargo in a privately owned ship assisted by Navy salvors also gives rise to problems in general average which must be considered in the handling of affirmative salvage claims. These matters also are dealt with by the Assistant Supervisor of Salvage, New York.

h. Possible claim for damage to a privately owned ship during salvage operations also needs special consideration. In some instances, shipowners have sought to offset the Navy per diem charges in whole or in part with claims for damage to their ship caused by the salving naval vessel or her personnel. In such cases, the per diem charge is withdrawn and the Navy's claim reasserted on a salvage-bonus basis. In other instances, the shipowner has paid the per diem salvage charge, and then, without prior notice, claims for damage to his ship on a tort basis. By such time, the prior settlement of the salvage claim has precluded any claim for a salvage-bonus award. To avoid this possibility, settlement of a Navy salvage claim is normally conditioned upon a release of any claim for damage to the private ship incurred during the salvage operation.

i. In any instance of damage, claimed or actual, to a private vessel during a Navy salvage operation, commanding officers and judge advocates should immediately arrange for survey and follow the necessary reporting and investigative procedures. Depending on the circumstances, such claims may fall either within the settlement authorization of 10 U.S.C. §7622 administered by the Judge Advocate General or 10 U.S.C. §7365 administered by the Supervisor of Salvage.

j. In many cases, a separate "finder's reward" may be paid for information leading to the recovery of certain types of ordnance or oceanographic equipment. Provisions for these payments may be found in NAVORDINST 8500.1 series and NAVOCEANINST 7240.2 series, respectively.

1215 TOWAGE AND PILOTAGE

a. There are situations where the Navy performs towage or pilotage for privately owned vessels, other than services rendered in conjunction with salvage operations discussed in section 1214, *supra*. While towage and pilotage services are often rendered concurrently, a vital distinction between the two should be recognized. This distinction is especially important when considering the questions of liability for damage caused by negligent towing (including tug assistance to a vessel) or negligent piloting.

b. Where towage or pilotage is performed by commercial firms, they usually attempt to exempt themselves from liability for negligent pilotage by contract. Therefore, it is recommended that, whenever feasible, Navy pilotage be performed only upon execution of the suggested contract illustrated in Appendix A-12-a.

c. These contractual exemptions from liability have, to a great extent, been successful in pilotage situations. On the other hand, the courts have consistently held as invalid those clauses attempting to contract away liability for negligence with respect to towage.

d. For many years towing companies inserted a provision in all towing contracts stipulating that towage would be solely at the risk of the towed or assisted vessel. The intent was, of course, to immunize the tug from liability for any negligence in performing the towage. This exculpatory clause was held invalid by the Supreme Court as being contrary to public policy. *Bisso v. Inland Waterways Corp.*, 349 U.S. 85, 1955 A.M.C. 899 (1955).

e. Another clause of this type of towing contract, referred to in the *Bisso* case, sought to make the master, crew, and employees of the tug, the "servants" of the tow. Naturally, this clause, if upheld, would relieve the tug of liability for negligence. The Supreme Court made short work of the "fictitious employment" clause and struck it down. *Bisso, supra*, at 94-95. For the most part, these decisions are in conformity with the general principle that one cannot contract away liability for his own negligence.

f. Exculpatory clauses in pilotage contracts, however, have been treated more generously by the courts. The courts have justified the distinction between towage and pilotage exemption clauses on the basis of the unique position occupied by pilots. "Under law and custom they have an independence wholly incompatible with the general obligations of obedience normally owed by an employee to his employer." *Bisso, supra*, at 93-94.

g. Commercial pilotage contracts contain a clause providing that the "pilot" (often the captain of one of the assisting tugs) becomes "the servant of the owners of the vessel assisted." An early decision supports this concept of a "borrowed servant," and serves to immunize the towing company from liability to the tow for damage caused to the latter by the pilot's negligence. *Sun Oil Co. v. Dalzell Towing Co.*, 287 U.S. 291, 1932 A.M.C. 149 (1932).

h. Cases involving damage to a third party as a result of negligent towage or pilotage present special problems. The contract format illustrated in Appendix A-12-a reflects the results brought about by several court decisions. *The Beatrice*, 161 F. Supp. 136, 1958 A.M.C. 1612; *aff'd*, 275 F.2d 209, 1960 A.M.C. 1408 (2d Cir. 1960); *A.L. Mechling Barge Line Inc. v. Derby Co., Ltd.*, 329 F.2d 309, 1968 A.M.C. 1436 (5th Cir. 1968).

i. Because of the varying attitude of the courts, which on one hand have upheld exculpatory language in a commercial pilotage situation, while invalidating language designed to achieve the same purpose in a towage situation, it is advisable to require the execution of an agreement containing the clauses found in Appendix A-12-a. This will assist in preventing the Navy from being held liable for negligent pilotage and/or tug services in the situation where a commercial company would be relieved of liability.

1216 DAMAGES

a. Establishing Navy affirmative damage claims often presents extreme difficulty, requiring an exacting and high standard of proof. Particularly difficult are detention claims with respect to naval vessels.

b. Among the items of claim which may result from a collision are the following:

(1) Temporary and permanent collision repairs.
(2) Drydocking.
(3) Lost and damaged equipment, stores, provisions, fuel, and ammunition.
(4) Handling fuel and ammunition.
(5) Towage and pilotage after collision.
(6) Personnel claims.
(7) Survey fees.
(8) Detention.

c. The degree of proof of Navy damages is illustrated in the Commissioners' Reports in the *CHICAGO-SILVERPALM, EVANSVILLE-MARBLEHEAD* cases, *U.S. v. M/S SILVERPALM,* 1937 A.M.C. 498 (N.D. CAL. 1937); *U.S. v. SS EVANSVILLE,* 1941 A.M.C. 62 (E.D.N.Y. 1940). To meet the required burden of proof, it is necessary that the original documentary data which establish the repair costs be obtained immediately. The Naval Sea Systems Command has called to the attention of its field activities the necessity for maintaining separate and exact records of collision repair costs of naval vessels and for expediting the furnishing of such data to judge advocates who are concerned with the preparation of damage statements. Collision repair specifications should be consonant with the surveyor's findings and recommendations.

d. In each situation, the original specifications, job orders, time and material cards, drydocking report, and departure report will be required. It is also essential that the log of the naval vessel contain entries to establish specifically the times when collision repairs commenced, during which they were carried out, and when they were completed. Coordination with the repair activity is, of course, necessary in this regard, in order that there will be no time discrepancies in the various records. The local judge advocate or admiralty officer, on being advised of the start of collision repair work, should keep in touch with the repair yard to assure adherence to the prescribed procedure, and preparation of the required records. Where a departure report is prepared, it must be checked to confirm that the data are consistent with the repair period, and to make certain that there has been proper allocation of costs between collision and noncollision items, as reflected by the job orders.

e. All noncollision work must be covered by separate job orders. This procedure will eliminate the issue of the possible inclusion of noncollision work in the collision repair costs. If during the repairs additional damage is discovered which was not covered by the original survey, opposing interests should be notified and given a chance to survey the newly discovered damage.

f. Questions as to the rate of overhead, what items are properly included therein, drydocking charges, and naval shipyard repair costs as compared with commercial costs, are issues of law and matters for negotiations in settlement. These problems therefore are not discussed here in detail.

g. An almost unvarying issue is the Navy detention claim. When a commercial vessel must immediately be withdrawn from service by reason of collision, her owner recovers her loss of earnings in addition to expenses reasonably incurred during the repair period. The same rule as to loss of earnings does not apply to naval vessels, since they are not engaged in carrying passengers or cargo for profit. However, when the loss of use of a naval vessel is the proximate result of a collision, the Government is entitled to recover the operating and maintenance cost of the ship for the period during which the Navy has been deprived of her normal service. These costs include the out-of-pocket expenses incurred during the repair period, particularly the following:

(1) Pay and allowances of officers and crew.
(2) Subsistence of crew.
(3) Fuel and lube oil consumed.
(4) Supplies and stores consumed.

h. To support a detention claim, it is necessary to include in the Navy's damage settlement documentary evidence showing the exact subsistence, wages, and other expenses of the naval vessel. With respect to pay and subsistence, this is best handled in the form of affidavits from the cognizant supply and disbursing officers to the effect that the original records disclose expenditures for pay and subsistence as set forth in the affidavits. The Judge Advocate General (Admiralty Division) or the local judge advocate will advise in appropriate cases whether such affidavits are required. The length of the repair period, if not established by the vessel's log, will require independent evidence. With the basic facts as to subsistence, wages, and the repair period thus established, the extent of recovery for detention becomes a question of law. The ship's log should contain entries showing when the vessel entered and departed the repair yard and when collision repairs were started and completed.

i. It is most desirable that collision repairs to a naval vessel be made as expeditiously as practicable, where a detention claim exists against another vessel, in an effort to eliminate the issue of whether repairs by a naval activity required an unreasonable time. A short repair period may also avoid the skeleton crew doctrine, which has been asserted against the Navy in some of the older litigated cases. Under this doctrine where an extended repair period was involved, the Navy was allowed to recover only the pay, allowances and subsistence for a skeleton crew, rather than the full complement of officers and men.

j. Where a vessel would have been out of service in any event, for example, by reason of annual overhaul or prospective inactivation, detention is not legally recoverable. To avoid the labor of preparation of detention data in cases where detention is not recoverable, the local judge advocate and the Judge Advocate General (Admiralty Division) should be advised as soon as possible of plans for repair of the naval vessel. Appropriate instructions will then be issued as to the extent of the data required in support of the Navy's claim.

k. Naval vessels (particularly MSC vessels) are frequently repaired in commercial yards rather than naval shipyards. In such cases, the collision repair specifications should be written up on the basis of the surveyors' findings and recommendations. Invitations to bid are then normally issued to commercial shipyards, and the contract is awarded on the basis of the low bid. This procedure simplifies proof of the collision repair costs, which can be established by the shipyard's bill or invoice. As in the case of repairs by a naval shipyard, it is most important that any noncollision work be covered by separate specifications, job orders, bids and invoices.

l. Extreme difficulties arise in the preparation of damage statements if these matters are deferred until the issue becomes relevant in future negotiations or litigation. For that reason, damage statements are prepared immediately after the necessary cost data are available upon the completion of collision repairs. As in the case of the original documentary data with respect to navigation, the original documents to support the damage claim must be carefully preserved.

1217 SUMMARY

a. In Collision Cases:

(1) Report the collision by message to JAG and concerned commands as required.

(2) Preserve the original logs, navigational, radar, and other ship's records bearing on the collision.

(3) Do not erase any log or other entry. If correction is needed, line through original entry, write-in and initial the substituted entry.

(4) Compare and note any discrepancies between the bridge and engineroom clocks. Log the faults of the other vessel.

(5) If no investigation is ordered, take detailed statements of witnesses, including name, rate, social security number, license or certificate (Z) number, marine experience, and permanent home address.

(6) Instruct all hands not to discuss the circumstances of the collision with anyone except appropriate Navy representatives.

(7) Obtain photographs of the damage, showing the angle of collision and other details.

(8) Where the other vessel was wholly or partially at fault, take steps to support the Navy's damage claim.

b. In Personal Injury Cases:

(1) Report as required.

(2) Record circumstances in log and preserve entries.

(3) Afford injured person opportunity for physical examination (including X-rays) and emergency medical treatment. If availed of, log and report results; if refused, note accordingly.

(4) Take detailed statements of witnesses with identification as suggested above.

(5) If gear or equipment gave way, preserve same if practical.

(6) Take photographs of the place or apparatus involved.

(4) No delivery of a serviceman by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by section 1305 and execution of such agreement by officials of both the requesting State and the State in which the serviceman is located or execution of such agreement by officials of the State in which the man is located where such officials accept on behalf of such State the full responsibility for returning the individual to the designated military command.

d. *Personnel stationed outside of the United States.* When the serviceman sought by State authorities is not located within a State, Territory, or Commonwealth of the United States, see section 1303.

1303 PERSONNEL STATIONED OUTSIDE THE UNITED STATES

a. *Personnel desired by local authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will direct the Commandant of the Marine Corps or Chief of Naval Personnel, as the case may be, to issue appropriate orders to the individual concerned directing his transfer to the United States to the military installation most convenient to the Department of the Navy. The individual will be held under the minimum restraint required under the circumstances. The Commandant of the Marine Corps or the Chief of Naval Personnel, as the case may be, will inform the officials of the requesting State of the location of the individual concerned and that custody may be obtained by compliance with section 1301, or 1302, as applicable.

b. *Personnel desired by Federal authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial in Federal District Court, upon appropriate representations by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the individual will be returned to the United States and held at a military facility convenient to the Department of the Navy. Delivery may be accomplished as set forth in section 1306.

1304 JAG AUTHORITY

The Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under sections 1301, 1302, 1303, 1305, 1314, 1315, 1320, 1323, and 1330.

1305 AGREEMENT REQUIRED PRIOR TO DELIVERY TO STATE AUTHORITIES

a. *Delivery under Article 14, UCMJ.* In every case in which the delivery of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in Appendix A-13-b. When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which he is attached) which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation (under escort in case of delivery in accordance with section 1315) back to a naval or Marine Corps activity as set forth herein, cash necessary to cover his incidential expenses en route thereto, and the Department of the Navy so informed. Any departure from the agreement set forth in Appendix A-13-b must have prior approval from the Secretary of the Navy (Judge Advocate General).

b. *Delivery under Interstate Agreement on Detainers Act.* Special forms, not contained in this Manual, are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to Article 14, UCMJ. See section 1315 for a detailed discussion of the Act.

1306 DELIVERY OF PERSONNEL TO FEDERAL AUTHORITIES

a. *Authority to deliver.* Commanding officers are authorized to and should deliver personnel to Federal law enforcement authorities who display proper credentials and represent to the command that a federal warrant for the arrest of the individual concerned has been issued, subject to exceptions in section 1308. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected if reasonably practicable.

b. *Agreement not required of Federal authorities.* The agreement described in section 1305 will not be exacted as a condition to the delivery of personnel to Federal law enforcement authorities. In the event that the person delivered is acquitted, or, if convicted, immediately upon satisfying any sentence of the court, or upon other disposition of his case, the person will be returned to the naval service (provided that naval authorities desire his return) and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

1307 DELIVERY OF PERSONNEL TO FOREIGN AUTHORITIES

Except when provided by agreement between the United States and the foreign government concerned, commanding officers are not authorized to deliver persons in the Department of the Navy to foreign authorities. When a request for delivery of personnel is received in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General. Detailed information concerning the delivery of naval personnel to foreign authorities when a status of forces agreement is in effect between the United States and the foreign country concerned is contained in DoD Directive 5525.1 and SECNAVINST 5820.4 series.

1308 CIRCUMSTANCES IN WHICH DELIVERY IS REFUSED

a. *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending, commanding officers should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery of personnel to Federal, State, Territory, Commonwealth, or local authorities if reasonably practicable.

b. *When delivery may be refused.* Delivery may be refused only in the following limited circumstances:

(1) Where the accused has been retained for prosecution as set forth in section 0107g(3)(a);

(2) When the commanding officer considers that extraordinary circumstances exist which indicate that delivery should be denied.

c. *Delivery under Detainers Act.* Where the accused is undergoing a sentence of a court-martial, see section 1315.

d. *Reports required.* When refusal of delivery is intended see section 1310.

1309 RESERVED

1310 REPORT REQUIRED WHEN DELIVERY REFUSED

In any case where it is intended that delivery will be refused, the commanding officer shall report the circumstances to the Judge Advocate General by message (or by telephone if circumstances warrant). The initial report shall be confirmed by letter setting forth a full statement of the facts. RCS JAG 5821-4 (Appendix A-13-c). A copy of the report shall be forwarded to the area coordinator.

1311 RESERVED

1312 PERSONNEL RELEASED BY CIVIL AUTHORITIES ON BAIL OR ON THEIR OWN RECOGNIZANCE

A person in the Navy or Marine Corps arrrested by Federal, State or Territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or Territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or leave to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

CHAPTER XX

GENERAL CLAIMS REGULATIONS

PART A—GENERAL PROVISIONS FOR CLAIMS

2001 SCOPE OF PART A

2002 INVESTIGATION: IN GENERAL

2003 INVESTIGATION: REQUIREMENTS
- a. When required
- b. Immediate reports
- c. Investigation without delay
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2004 INVESTIGATION: RESPONSIBILITY FOR

- a. Immediate responsibility
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2005 THE INVESTIGATING OFFICER: IN GENERAL

2006 THE INVESTIGATING OFFICER: DUTIES

2007 THE INVESTIGATIVE REPORT: CONTENTS

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2009 THE INVESTIGATIVE REPORT: ACTION BY REVIEWING AUTHORITY

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2010 CLAIMS: IN GENERAL

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2011 CLAIMS: A PROPER CLAIMANT

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2012 CLAIMS: PRESENTMENT OF

- a. Standard Form 95
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- a. Information to be submitted
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(9) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(10) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(11) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, address, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(12) If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(13) A statement as to whether any person involved violated any state or Federal statute,local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(14) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(15) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(16) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractual agreement to indemnify the Government.

(17) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under section 2006 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure. Report control Symbol JAG 5890-4 is assigned to this report.

(18) The preliminary statement to a report of an investigation into a claim under the Federal Tort Claims Act should include the following language: "This investigation has been conducted and this report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."

b. *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by section 2006 and the detailed report described in subsection a above, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Part B of this chapter) or the Military Claims Act (Part C of this chapter); and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in Appendix A-20-c. Report Control Symbol JAG 5890-14 is assigned to this report.

2008 THE INVESTIGATIVE REPORT: ACTION BY THE COMMANDING OFFICER OR OFFICER IN CHARGE

a. *Action.* If a claim is likely to arise, the investigative report shall be reviewed and, if additional investigation is required or omissions or other deficiencies are noted, the investigation should be promptly forwarded with an endorsement indicating that a supplemental investigative report will be submitted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if practicable, in endorsing the report. If the original or supplemental report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in subsection 2007b is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing that report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request. An advance copy of the investigation shall be forwarded to the naval legal service office having territorial responsibility for the area where the incident giving rise to the claim occurred as indicated in appendix A-20-f(1).

b. *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention: Commanding Officer of the appropriate Naval legal service office, or the cognizant staff judge advocate." When there is doubt as to the appropriate adjudicating authority, the reports may be forwarded through the proper chain of command to the Judge Advocate General.

2009 THE INVESTIGATIVE REPORT: ACTION BY REVIEWING AUTHORITY

a. *Forwarding.* A reviewing authority may direct that additional investigation be conducted, if considered necessary. The initial investigation should not be returned for such additional investigation, but should be forwarded by an endorsement indicating that supplemental material will be submitted. The report shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

b. *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. § 552a) and SECNAVINST 5211.5 series. Any indication of noncompliance shall be explained either in the preliminary statement or the forwarding endorsements and, when required, remedied in accordance with section 0308. The appropriate officer listed in Appendix A-20-f has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

c. *When a claim has been filed.* If a claim has been filed, see section 2016. When a claim is received, all holders of the investigative report shall be notified.

2010 CLAIMS: IN GENERAL

a. *Claims against the United States.* Claims against the Government shall receive expeditious and just disposition throughout the entire course of processing. Sections 2011-2022 should generally be followed in such processing. All claims against the Government, to be deemed meritorious, must have a basis in a specific Congressional enactment. Accordingly, any claim should be viewed in light of that statute under which it might be considered, if at all, and the specific provisions of this manual concerning that statute should be consulted.

b. *Claims in favor of the United States.* See Chapter XXIV for the processing of claims in favor of the Government.

c. *Assistance to claimants.* Claimants or potential claimants who make inquiry concerning their rights or procedures to be followed in the filing of claims shall be referred to a Navy claims officer. It shall be an official duty of the claims officer to: (1) provide such persons with the proper claims forms, (2) advise where the claims forms should be submitted, (3) advise what, if any, substantiating evidence will be required to be filed with the claims forms, and (4) advise generally concerning the requirements of section 2013. A Federal official must be careful not to violate 18 U.S.C. §205, which makes it a crime for any officer or employee of the United States to act as an agent or attorney in the prosecution of any claim against the United States. See section 1907d concerning requests for legal assistance in connection with claims against the United States.

2011 CLAIMS: A PROPER CLAIMANT

a. *Damage to property cases.* A claim for damage to, or loss or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary or legal representative.

b. *Personal injury or death cases.* A claim on account of personal injury shall be presented by the

to forwarding the report to the Judge Advocate General.

d. *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report and exhibits may be found shall be included.

e. *Small-claims procedure.* When the total amount claimed is $500 or less and the claims investigating officer has determined that all damage or loss claimed was actually incurred, that the amounts claimed are accurate and reasonable, and that the full amount claimed, limited by normal depreciation where applicable, should be allowed, he may complete part II of DD Form 1842 (*see* Appendix section A-21c(3)) in lieu of making a more detailed written report. Preparation of DD Form 1842, part II, for certification and signature by the adjudicating authority shall constitute a finding that the claim is properly presented and substantiated and a recommendation for payment in full less normal depreciation, if applicable. The foregoing small-claims procedure is not applicable to claims by Marine Corps personnel.

f. *Forwarding of claims.* For all claims not including enlisted uniform items to be replaced in kind, a claims investigating officer representing a Navy Personal Property Office or Marine Corps Transportation Office may, with the permission of his Commanding Officer, forward the claim file and claims investigating officer's report directly to the cognizant adjudicating authority. All other claims should be forwarded to the cognizant adjudicating authority via the Commanding Officer.

2123 ACTION BY COMMANDING OFFICER

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. (*See* section 2124e.) The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, *and* replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

a. *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigating officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

b. *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

c. *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in Appendix section A-21-i.

2124 ADJUDICATING AUTHORITY

a. *Claims by Navy personnel*

(1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

(a) The Judge Advocate General

(b) Deputy Judge Advocate General

(c) Any Assistant Judge Advocate General

(d) The Deputy Assistant Judge Advocate General (Claims)

(e) Commandant, Naval District Washington and his/her staff judge advocate

(f) Commanding officers of naval legal service offices

(g) The Staff Judge Advocate attached to Naval Supply Center, Oakland, and Naval Activities, United Kingdom.

(2) The following are authorized to adjudicate and authorize payment of personnel claims up to $10,000:

The Staff Judge Advocate attached to Naval Base, Guantanamo; Naval Base, Roosevelt Roads; Naval Station, Panama Canal.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $5,000:

(a) Officers in charge of naval legal service office detachments;

(b) Any judge advocate attached to a naval legal service office when specifically designated by the officer in charge;

(c) The Staff Judge Advocate attached to Naval Supply Center, Puget Sound;

(4) All Navy judge advocates are hereby designated and authorized to adjudicate and authorize payment of personnel claims up to $1,000;

(5) Any Navy judge advocate may be authorized to adjudicate personnel claims up to $25,000 when specifically designated by the Judge Advocate General;

(6) Any naval officer, when personally designated by the Judge Advocate General, is authorized to adjudicate and authorize payment of personnel claims up to $1,000; and

(7) Authorization to adjudicate and authorize payment of personnel claims up to a specific dollar amount is indicated *supra*, or by separate correspondence from the Judge Advocate General. Authorization to adjudicate claims up to a specific dollar amount is separate and distinct from holding an allotment. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General. Commands holding allotments from the Judge Advocate General are indicated in Appendix A-21-i.

b. *Claims by Marine Corps personnel.*

(1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

(a) Commandant of the Marine Corps;

(b) Deputy Chief of Staff;

(c) Director, Manpower Plans and Policy Division; and

(d) Head, Human Resources Branch.

(2) The following is authorized to adjudicate and authorize payment of personnel claims up to $2,500:

(a) Head, Personal Affairs Section.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $1,500:

(a) Head, Personnel Claims Unit; and

(b) Deputy Head, Personnel Claims Unit.

c. *Claims by nonappropriated-fund employees.* Claims by employees of Navy nonappropriated-fund activities for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this chapter and forwarded to the appropriate nonappropriated-fund activity for payment from nonappropriated funds. Claims by employees of Marine Corps nonappropriated-fund activities should be referred directly to the appropriate nonappropriated-fund activity for investigation and payment.

d. *Partial payments when hardship exists.*

(1) Every instance of loss or damage cognizable under this chapter can be expected to cause some degree of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file, and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made. Each authorization of partial payment must be accompanied by:

(a) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a statement that he is aware of the penalties imposed by title 18 section 287 of the United States Code for willfully making a false claim. The claimant may present his statement on a Personnel Claim form (DD Form 1842 with DD Form 1845 attached) for the purpose of compliance with this requirement.

(b) A statement by the claims investigating officer confirming that the claimant is a proper claimant under the provisions of this chapter and setting forth his opinion regarding the reasonableness, amount, and type of additional substantiation necessary before investigation of the claim can be completed, and any other information relevant to the hardship of the claimant or his family.

(c) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this chapter and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this section.

(2) Inasmuch as all claims by Marine Corps personnel (military and civilian), except claims by nonappropriated fund employees, are adjudicated within Headquarters Marine Corps, Washington, D.C., and there are no field adjudicating authorities for Marine Corps personnel, the Marine claimant's Commanding Officer shall ensure compliance with all requirements of section 2124d(1)(a) through (c), and may request authority for payment by message from the Commandant (Code MHP-40).

e. *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in subsection (a) above, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this chapter. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this chapter. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy. Accounting data for replacement of uniform items is: 97-0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 042, bureau control number 13003, authorization accounting activity 065872, transaction type 2D cost code 000000099250. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

f. *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will

be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2.

2125 LIMITATION ON AGENT OR ATTORNEY FEES

a. *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended,

PART A–MEDICAL CARE CLAIMS

2401 DEFINITIONS

For purposes of this chapter:

a. *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

b. *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Claims);

(2) The commandants of all naval districts not served by naval legal service offices, and their district judge advocates;

(3) The officers in charge of all naval legal service offices, except naval legal service offices in countries where another service has single service responsibility;

(4) The officers in charge of U.S. sending state offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

c. *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee, *e.g.*, where the tortfeasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

d. *The Act.* "The Act" means the Medical Care Recovery Act (42 U.S.C. §§2651-53)

e. *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

f. *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claim.

2402 AUTHORITY OF THE JUDGE ADVOCATE GENERAL AND JAG DESIGNEES

a. *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (*i.e.*, a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (*e.g.*, in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

b. *Authority of JAG and certain JAG designees.*

(1) The Judge Advocate General or any cognizant JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) Any cognizant JAG designee, after considering the factors set forth in section 2405, may compromise or waive any claim not in excess of $40,000 and issue a release therefor.

c. *Claims exceeding $40,000.* Claims in excess of $40,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

d. *Potential Value of Claims.* When settlement, compromise or waiver is imminent and the final NAVJAG 5890/12 has not been filed, JAG designees are authorized to estimate the potential value of the claim and to take appropriate action if the potential value comes within their settlement authority.

e. *Recomputation of Claims.* JAG designees are authorized to recompute the amount of claims reported on form NAVJAG 5890/12 in accordance with the standards of *Tolliver v. Shumate*, 151 W. Va. 105, 150 S.E.2d 579 (1966), and *United States v. Jones*, 264 F. Supp. 11 (1967). The information contained on the back side of form NAVJAG 5890/12, the particular practices of the hospital involved and the known facts of the case will be considered. Hospitalization periods may be subtracted from the claim when such hospitalization was unnecessary (such as where a patient was given leave, liberty, or was awaiting assignment to new duties), or may be charged at the reduced rate of an outpatient visit for each day of hospitalization where medical treatment was actually rendered, but hospitalization in a civilian hospital would have been unnecessary or inappropriate. If, upon recomputation, the claim is within the authority of the JAG designee making such recomputation, the claim may be acted upon by that JAG designee.

f. *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice, (2) a suit has been instituted against the United States by the third party, or (3) a suit has been instituted against the individual who received or is receiving the medical care described above, and for whose negligence the United States may be held liable.

g. *Restrictions on contact with Department of Justice and United States Attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. Attorneys except in those cases (1) where the Department of Justice or a U.S. Attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3) where such action is authorized by the Judge Advocate General.

2403 REPORT OF CARE AND TREATMENT

a. *NAVJAG Form 5890/12.* The front side of NAVJAG Form 5890/12 (see Appendix section A-24-d(1)) shall be used by all Navy medical facilities to report the value of medical care furnished to any patient (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation, no-fault insurance, or under medical-payments insurance (e.g., in all automobile accident cases). Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG Form 5890/12 shall show the patient the Privacy Act statement printed at the bottom of the form and shall have the patient sign his name beneath the statement.

b. *Computations.* The front side of NAVJAG Form 5890/12 shall be computed by using the rates set out in Appendix A-24-c(1) and (2). All computations by medical personnel and any necessary recomputations will be made pursuant to section 2402e.

c. *Submission of the front side of NAVJAG Form 5890/12.* The front side of NAVJAG Form 5890/12 shall be submitted to action JAG designee at the following times:

(1) An "initial" submission of the front side of NAVJAG Form 5890/12 shall be made as soon as practicable after the patient is admitted for inpatient care of any duration, or when more than seven outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of the front side of NAVJAG Form 5890/12 shall be made every four months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of the front side of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital.

2409 GEOGRAPHICAL LIMITATIONS– SINGLE-SERVICE RESPONSIBILITY

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. See section 2024 for single-service responsibility.

2410 RATES FOR MEDICAL CARE PROVIDED IN FEDERAL HOSPITALS

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in Appendix A-24-c.

2411 SINGLE DEMAND FOR MEDICAL CARE AND PROPERTY DAMAGE CLAIMS

An effort should be made to include all medical care and property damage claims in a single demand for payment against a third-party or his insurance company.

2412 STATUTE OF LIMITATIONS

Pursuant to the provisions of 28 U.S.C. §2415(b), a 3-year statute of limitations exists for actions arising under the Federal Medical Care Recovery Act. Accordingly, consideration should be given to forwarding files to JAG in cases where it appears that the Government's claim is not adequately protected and that settlement of the Government's claim will not occur within the time prescribed by the statute.

2413 REFERENCE MATERIAL

The following aids and reference materials are contained in Appendix A-24:

A-24-a. Executive Order 11060 of 7 November 1962, authorizing the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act;

A-24-b. Department of Justice Order Number 289-62 (as amended), pursuant to Executive Order 11060;

A-24-c. Bureau of the Budget Rate Schedules, pursuant to Executive Order 11060;

A-24-d. NAVJAG Form 5890/12, (Rev. 3-78), "Hospital and Medical Care 3rd Party Liability Case,"

A-24-e. Standard Form 96, "Notice of Claim,"

A-24-f. Reserved.

A-24-g. Department of the Navy Promissory Note.

A-24-h. Sample report on property damage claims.

PART B–PROPERTY DAMAGE CLAIMS

2414 REGULATIONS CONCERNING AFFIRMATIVE CLAIMS

Property damage claims in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. §952), as implemented by the "Joint Regulations of the General Accounting Office and Department of Justice on Federal Claims Collection Standards" (Part C of this chapter). Department of Defense Directive 5515.11 of 10 December 1966 delegates to the Secretary of the Navy and his designees the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

2415 PURSUIT, SETTLEMENT, AND TERMINATION OF CLAIMS

a. *Authority to handle claims.* Subject to section 2415b, the following officers are authorized to pursue, collect, compromise, and terminate collection action on property damage claims in favor of the United States:

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims);

(2) The commandants of all naval districts who are not served by naval legal service offices, and their district judge advocates;

(3) The officers in charge of all naval legal service offices, except naval legal service offices in countries where another service has single-service responsibility;

(4) Commanders, commanding officers, and officers in charge of overseas commands with a Navy or Marine Corps judge advocate attached, except in countries where another service has single-service responsibility.

b. *Claims over $20,000.* Claims in excess of $20,000 may not be compromised or terminated without the permission of the Department of Justice. The officers designated by section 2415a should pursue all Navy claims on behalf of the United States. If a compromise offer is obtained, or if termination is recommended, the claims file should be sent to the Judge Advocate General for referral to the Department of Justice. The file should include the information required by the Joint Regulations on Claims (Part C of this chapter).

c. *Releases.* The officers designated by section 2415a are authorized to execute a release on behalf of the United States (1) when full payment is received, (2) when a claim is under $20,000, or (3) when permission to compromise has been granted by the Department of Justice.

2416 COLLECTION OF CLAIMS

a. *Deposit of funds.* When a private party or his insurer tenders a full payment or a compromise settlement, the payment should be in the form of a check or money order made payable to the order of the collecting organization, such as the "Commandant, Twelfth Naval District" or the "Commander, U.S. Naval Forces Marianas." The check or money order should then be forwarded for deposit by the disbursing officer serving the collecting organization. Funds so collected are normally to be deposited to the Navy general fund receipt accounts as provided in the Navy Comptroller Manual.

b. *Navy Industrial Fund.* Where the loss or the cost of repairs has been borne by an industrial-commercial activity, payment should be deposited to the Navy Industrial Fund of the repairing activity. *See* Navy Comptroller Manual, paragraph 043114. When a claim is based upon loss or damage sustained by such an activity, a notation to this effect shall be included in any file forwarded to the Judge Advocate General.

c. *Rental automobile deductible damage claims.* When a rental automobile is damaged while in the possession of service personnel or Government employees on official business and a part of the damages is paid or reimbursed by the Government in accordance with Joint Travel Regulations [Volume 1, paragraph M4405-1 and Volume 2, paragraph C2101-2] officers authorized to take collection action under this Part shall endeavor to collect the amount of the Government's loss from any third-parties liable in tort. Collection action should not be directed at the personnel who rented the damaged vehicles. Collection efforts may be discontinued or claims compromised in accordance with the guidelines of Part C of this chapter.

d. *Property of nonappropriated-fund activities.* In instances of recovery because of loss or damage to property of a nonappropriated-fund activity, the amount recovered should be forwarded to the appropriate headquarters of the nonappropriated-fund activity for deposit to that activity. In those situations where the recovery involves damage to both nonappropriated-fund-activity-owned property and other Government property, *e.g.*, destruction by fire of an Exchange building resulting in damage to the building and to the Exchange-owned personalty contained therein, recovery from the tortfeaser for the Exchange-owned personalty should be forwarded to the nonappropriated-fund activity. Recovery for the building damage should be deposited to the Navy general fund receipt accounts as indicated in §2416a. Appropriate documentation should be included in every claims file.

2417 REPAIR OF GOVERNMENT PROPERTY BY THE TORT-FEASOR

In some cases, a person who has damaged Government property (or his insurer) offers to repair the property or to arrange for its repair. The commanding officer or officer in charge of the activity concerned is authorized to accept such an offer if he considers it to be in the best interests of the Government. The commanding officer or officer in charge is also authorized to assure the private party that a full release of the claim of the United States will be executed (a) when the repairs are completed to the Government's satisfaction, and (b) when all repair bills have been paid by the private party. Such a procedure may be followed without the prior approval of the Judge Advocate General or his designee, and without first submitting an investigative report. When the investigative report is submitted, however, it shall contain a statement of the cost of the repairs and a statement by the commanding officer or officer in charge that the property has been satisfactorily repaired, and that all bills for repair have been paid.

2418 REFERRAL OF CASES TO THE DEPARTMENT OF JUSTICE OR GAO

Only the Judge Advocate General shall refer claims to the Department of Justice or to the General

j. Sample of recommendation by examining judge advocate

See section 0814e

From: ____________________________, JAGC, USN

To: Commanding Officer, ____________________________

Subj: Report of injury to ____________________ in ____________

1. I have examined subject report.

2. (Comment.)

3. A JAG Manual investigation (is) (is not) recommended.

____

____________________, JAGC, USN

REPORT OF PROCEEDINGS UNDER SECTION 0815a(3) OF THE JAG MANUAL

I, ____, have been afforded a hearing which included the following advice and, by initialling opposite each item, I confirm that it was explained to me and that I fully understand the contents of each one:

__________ 1. I was advised of and signed a copy of the Privacy Act Statement.

__________ 2. That questions have arisen concerning whether or not my injury/disease, sustained or discovered on ______________________________ 198______, was incurred in the line of duty or as a result of my own misconduct.

__________ 3. That, in the event such injury/disease is determined to have been incurred not in the line of duty or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment to make up for the duty time lost.

__________ 4. That lost duty time will not count as creditable service for pay entitlement purposes.

__________ 5. That I may be required to forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs).

__________ 6. That, if I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line duty, I may be barred from receiving disability pay or allowances, as well as veterans' benefits.

__________ 7. That I have been given the opportunity to inspect the complete investigation report, including all enclosures and endorsements thereto; and to discuss said report with a disinterested person of my choosing (chaplain, lawyer, supervisor, or anyone else not acting for the Government in the investigation).

__________ 8. That I may not be required to give a statement relating to the origin, incurrence, or aggravation of any disease/injury that I may have.

__________ 9. That I have been given full opportunity and a reasonable time to present any evidence, statements, letters, or other matters in explanation, refutation, rebuttal, or otherwise on my behalf respecting my injury/disease.

(Items 1 through 5 below need only be completed if the individual is suspected of an offense which is punishable under the Uniform Code of Military Justice. The fact that the individual is suspected of having incurred his injury/disease as the result of his own misconduct or not in the line of duty does not necessarily mean that he is suspected of having committed an offense.)

I further certify and acknowledge by my initials opposite each item that I have been advised as follows:

__________ 1. That I am suspected of the following offense which is punishable under the UCMJ:

____

____

____

____

__________ 2. That I have the right to remain silent.

__________ 3. That any statement I do make may be used as evidence against me in a trial by court-martial.

__________ 4. That I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at my own expense, or if I wish, Navy or Marine Corps authority will appoint a military lawyer to act as my counsel without cost to me, or both.

__________ 5. That I have the right to have such retained civilian lawyer and/or military lawyer present during the interview.

I do/do not choose to submit evidence in refutation, rebuttal, or otherwise respecting the incurrence of my injury/disease. (If matters are submitted, they should be attached as enclosures to the investigation report.)

____
Signature

____
Witness

____
Date

From: (Complainant, rank/rate)

To: (Officer exercising general court-martial jurisdiction)

Via: (Respondent)

Subj: COMPLAINT OF WRONGS AGAINST *(name, rank, title, and unit of person complained against)*
UNDER ARTICLE 138, UCMJ

Ref: (a) Article 138, UCMJ
(b) Chapter XI, JAGMAN

Encl: (1) Copy of my original application for redress dated ____________________
(2) Copy of my commanding officer's response to enclosure (1) (if available)

1. In accordance with references (a) and (b), I hereby complain against (name/title). Enclosure (1) is my previous request, pursuant to section 1106b of reference (b), which was denied by enclosure (2).

2. (Identify the specific action which gave rise to the wrong alleged and the detriment, harm, or injury suffered. Set forth all of the relevant facts applicable to the grievance, and include all available evidence, including affidavits and statements of witnesses which support the complaint or provide other pertinent information, and all available documentary evidence.)

3. (Set forth the specific relief desired.)

4. I swear that the foregoing is true, correct, and complete to the best of my knowledge and belief.

____
Signature of Complainant

____
Witness—(person authorized
by law to administer oaths)

From: (Officer exercising general court-martial jurisdiction)

To: Secretary of the Navy (Judge Advocate General)

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UCMJ, BY (rank/rate)

(Name) (service),

COMPLAINANT, AGAINST (rank) (name) (service),

COMMANDING OFFICER (unit), RESPONDENT

Ref: (a) Article 138, UCMJ
(b) Chapter XI, JAGMAN

Encl: (1) Original complaint with enclosures and endorsements (if unavailable, a certified copy thereof with explanation in para. 1, with regard to unavailability of originals)
(2) Copy of letter to complainant
(3) -(-) (Additional reports and investigations)

1. In accordance with references (a) and (b), enclosures (1)-(-) are forwarded.

2. In enclosure (1), (complainant) makes the following allegations:

a. - x. (Specifically list each separate allegation made.)

3. Regarding the allegations summarized in paragraph 2 above, I have made the following determinations: (a. - x.). (A determination must be set forth as to whether each allegation has merit or is without merit. References to specific sections of the enclosures should be made, where applicable.)

4. In enclosure (1), (complainant) requests the following relief:

a. - x. (Specifically list each element of relief requested.)

5. I have determined that (the following/no) relief is appropriate in this case. (If relief is granted, list the specifics thereof.)

6. By the original of enclosure (2), the complainant has been advised of the action I have taken as the officer exercising general court-martial jurisdiction.

(Personal signature of officer exercising general court-martial jurisdiction or of officer acting in such capacity)

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SUMMARY OF CHANGES AND EDITORIAL CORRECTIONS INCLUDED IN THIS REVISION

1.	§ 0101e(2)	This subsection is amended to permit an officer imposing a restraint-type nonjudicial punishment to interrupt a previously-imposed restraint-type nonjudicial punishment. A sentence that discussed correctional custody being served in a regular confinement facility has been removed.
2.	§ 0101f(3)	This subsection is amended to permit a Marine Corps officer exercising general court-martial jurisdiction who is senior in the chain of command to the officer imposing nonjudicial punishment some flexibility in the routing of NJP appeals.
3.	§ 0101j	This subsection is expanded: to provide for the interruption of periods of suspension of nonjudicial punishments under certain circumstances; to specify that the vacation of nonjudicial punishment suspension may only be based upon an act of misconduct occurring within the period of suspension; and to establish a time period after the proceedings within which the vacation must be ordered.
4.	§ 0102a	This subsection is amended to clarify that a punitive censure awarded to enlisted personnel at a court-martial is required to be in writing.
5.	§ 0103a(3)	This subsection is amended to correct a clerical error.
6.	§§ 0107g(1), 0107g(2), and 0107g(4)	These subsections are amended by changing a reference from "SECNAVINST 5430.13" to "SECNAVINST 5520.3."
7.	§ 0112b	This subsection is amended by adding an additional requirement based upon *United States v. Webster*, 24 USCMA 26, 51 CMR 76 (1975) and concerns notification to the defense of grants of immunity and promises of leniency given prosecution witnesses.
8.	§ 0116e	This subsection is amended to provide more flexibility in the forwarding of charges within Marine Corps commands by permitting Marine Corps GCM authorities to designate alternate routing of court-martial charges.

Enclosure (1)

READEX FICHE

9.	§ 0120b	This subsection is amended to establish a requirement that a summary of the providency inquiry following a guilty plea be included in the summarized records of all special and general courts-martial in order that reviewing authorities may be able to review the determination that the plea was provident.
10.	§ 0120c	This subsection clarifies the requirement to retain, until completion of review, the notes or recordings of court-martial trials where the accused has been acquitted of all charges or the proceedings have been terminated (prior to findings) with prejudice to the Government.
11.	§ 0120d	This subsection is amended to require that the convening order and a summary of the providency inquiry following a guilty plea be included in all summary court-martial trial records.
12.	§§ 0120e(2) and 0122b	These subsections implement United States v. Goode, 23 USCMA 367, 50 CMR 1 (1975) that requires the defense to be served with a copy of the staff judge advocate's review for comments prior to the convening authority's action. Comments become part of the record.
13.	§ 0120e(4)	This subsection is amended to indicate where, in the record of trial, to place a power of attorney executed by an accused authorizing his appellate defense counsel to accept service of Navy Court of Military Review decisions.
14.	§ 0121	This section is substantially revised to set forth detailed guidance for the trial defense counsel as to his post-trial duties and contains provisions for his relief during the review phase of the case.
15.	§ 0123g	This subsection is amended by an editorial change and to clarify its application to only special courts-martial not involving a bad conduct discharge and general courts-martial.
16.	§ 0123h	This new subsection is a result of United States v. Keller, 23 USCMA 545, 50 CMR 716 (1975). It requires a convening authority to state reasons for disagreement with his staff judge advocate's post-

trial review of general courts-martial in his letter of transmittal to the Judge Advocate General. A copy of the letter must be provided to the accused and his counsel.

17.	§ 0124a(3)	This subsection is amended to clarify the legal requirement that a supplementary court-martial order is necessary to order the sentence into execution for all Navy Court of Military Review cases unless otherwise specified in the subsection.
18.	§ 0125a(3)	This subsection is amended to clarify that a general court-martial authority may not act as both convening authority and supervisory authority in the review of a summary court-martial or a special court-martial not involving a bad conduct discharge.
19.	§ 0125a(5)(b)	This is an editorial change to conform to the language of paragraph 85c of the MCM, 1969, (Rev.).
20.	§ 0125b(1)	This subsection is amended by an editorial change.
21.	§ 0125b(3)	This subsection implements *United States v. Keller*, 23 USCMA 545, 50 CMR 716 (1975). It requires the reviewing authority in a special court-martial case involving a bad conduct discharge to forward all disagreements with recommendations of his staff judge advocate to the Navy Appellate Review Activity and to provide a copy of the letter of transmittal to the accused and his counsel.
22.	§ 0125b(5)	This new subsection implements *United States v. Brewer*, 24 USCMA 47, 51 CMR 141 (1975). It provides a time-frame for promulgation of supervisory authorities' actions when an accused is confined or restrained as the result of a special court-martial that includes an approved bad conduct discharge.
23.	§ 0128 and Appendices A-1-i(1), A-1-i(6), and A-1-i(7)	This section is amended to require a quarterly vice semi-annual submission of NAVJAG Forms 5800/9 and 5800/9A. These appendices are amended to reflect this quarterly-submission requirement.
24.	§ 0129b	This subsection is amended by an editorial change.

25.	§ 0131	This section is revised to require the appropriate officer to personally conduct hearings on alleged violations of probation of suspended sentences in court-martial cases. If some portion of the sentence is vacated, the officer taking this action must record, in his action, the evidence considered by him and his reasons for vacating the suspension. This revised section also requires that, before confining an individual prior to the actual vacation of the suspension, a hearing must be conducted by an independent officer. These requirements are an implementation of *United States v. Bingham*, 3 MJ 119 (CMA 1977).
26.	§ 0133d(3)	This subsection implements *United States v. Larneard*, 3 MJ 76 (CMA 1977), which requires that an accused (or his authorized appellate defense counsel) receive actual notice of the Navy Court of Military Review decision in his case before the 30-day appeal period for review by the United States Court of Military Appeals begins to run.
27.	§ 0133d(4)	This subsection is amended to require that an accused (or his authorized appellate defense counsel) receive actual notice of a Navy Court of Military Review decision before his 30-day appeal period for review by the United States Court of Military Appeals begins to run. The amendments implement the United States Court of Military Appeals' opinion in *United States v. Larneard*, 3 MJ 76 (CMA 1977).
28.	§§ 0136c(1) and 0136c(2)	These subsections are amended to reflect changes of address.
29.	§ 0138i(1)	This subsection is amended to provide that witness and subsistence fees for civilians are not prorated since any fractional part of a day is counted as a full day in determining these fees.
30.	§ 0140a	This subsection is amended to change a reference from "the Department of the Navy Security Manual for Classified Information" to "OPNAVINST 5510.1 series."
31.	§ 0141a	The Special Assistant to the Director, Judge Advocate Division, Headquarters Marine Corps, is added as a member of the JAG Ethics Committee.

32.	Appendix A-1-j	The Certificate of Attempted Service form has been deleted as United States v. Larneard, 3 MJ 76 (CMA 1977) stated that constructive service of a Navy Court of Military Review decision does not begin the running of the 30-day appeal period authorized for petitioning for United States Court of Military Appeals review. A suggested format of a power of attorney authorizing appellate defense counsel to accept service of the NCMR decision for the accused has been substituted.
33.	Appendix A-1-p(8)	This Rule of Practice is amended to delete the statement that "motions which are prescribed to be considered by a trial judge at a preliminary hearing which are not presented in accordance with this rule will not be entertained at a preliminary hearing or during the trial proper, except for good cause shown." This amendment is required by United States v. Kelson, 3 MJ 139 (CMA 1977).
34.	§ 0203d(2)	This subsection is amended to change a reference to a Secretary of the Navy instruction from "5430.13" to "5520.3."
35.	§ 0203d(7)	This new subsection adds reports of accidental injury required by the Naval Safety Center to the list of those investigations which may not be combined with JAG Manual investigations.
36.	§§ 0205b, 0207b, and 0211b(2)	These subsections are amended to correct clerical errors.
37.	§ 0211b(4)	This subsection is amended to emphasize that investigations involving the compromise of classified information are not routed to the Judge Advocate General.
38.	§ 0211c(1)	This subsection is amended to require that an additional copy of every JAG Manual investigation be provided the Judge Advocate General. The subsection also contains two corrected clerical errors.
39.	§ 0211c(2)	This subsection is amended to correct a clerical error.
40.	§ 0212a	This subsection is amended to change a reference to a Secretary of the Navy instruction from "5430.13" to "5520.3."

41.	§ 0212b	This new subsection prohibits the inclusion in JAG Manual investigations of polygraph-examination reports and their results, but requires notation of the report in appropriate cases.
42.	§ 0212c	This new subsection states that Naval Investigative Service Reports of Investigation should not be included in JAG Manual investigations but the enclosures may be included unless a local NISRA objects.
43.	§ 0505a	This subsection is amended to correct a clerical error.
44.	§ 0801a	This subsection is amended to clarify that a return to duty (not necessarily "full" duty) is sufficient to terminate the period of time of an extension of an enlistment of a service member who is unable to perform his duties because of his own misconduct.
45.	§§ 0807a and 0808a	These subsections are amended to correct an erroneous cite to U. S. Navy Regulations.
46.	§ 0809a	This subsection is amended to correct a reference.
47.	§ 0810a	This subsection is amended to require a JAG Manual investigation in any case where the service member dies from other than natural causes.
48.	§ 0810f	This subsection is amended to reflect the fact that OPNAV forms will no longer be used to report deaths. A letter report may be used when a fact-finding body is not required.
49.	§ 0814c(2)	This subsection is amended by substituting NAVJAG Form 5800/15 for Accidental Injury/Death Report (OPNAV Form 5100/1).
50.	§ 0814c(3)	This subsection is amended to substitute "OPNAV 5102/3" for "Standard Form 91A."
51.	§ 0814c(3)(c)	This subsection is amended by adding a reference to section 0308 for advice required to be given in compliance with the Privacy Act.

52.	§ 0814d(2)	This subsection is amended by substituting NAVJAG Form 5800/15 for Accidental Injury/Death Report (OPNAV Form 5100/1) and by substituting "OPNAV 5102/3" for "Standard Form 91A." The "NOTE" in this subsection is also deleted.
53.	§ 0815b	This subsection is amended by an editorial change.
54.	§ 0816	This section is amended to reflect the separation of safety investigations and reports from JAG Manual investigations and reports.
55.	§ 0817a	This subsection is amended by adding a reference to section 0308 for advice required to be given in compliance with the Privacy Act.
56.	§ 0817k	This new subsection is added to ensure that statements from injured service members are solicited in compliance with section 0306 of the JAG Manual.
57.	Appendices (Old) A-8-b(1) and A-8-b(2)	OPNAV Form 5100/1 is deleted, however, its continued use is authorized until NAVJAG Form 5800/15 is available (JAGNOTE 5800 of 28 June 1977).
58.	Appendices (Old) A-8-c(1), A-8-c(3), and A-8-c(4)	These forms are deleted and have been replaced by NAVJAG Form 5800/15. See new appendices A-8-c(1), A-8-c(2), A-8-g(1), and A-8-g(2).
59.	Appendices A-8-c(1), A-8-c(2), A-8-g(1), and A-8-g(2)	These appendices are substituted in lieu of OPNAV Form 5100/1 and NAVMC 10767.
60.	§ 0902a(3)	This subsection is amended to clarify that fact-finding bodies are required in every aircraft accident in which there is extensive damage to Government property (including damage to the aircraft).
61.	§§ 0906a, 0906b, and 0909f	These subsections are amended to correct erroneous references.
62.	§ 0911b	This subsection is amended by limiting the inclusion of travel time in computing the period of active

		duty for training of reservists to those instances where their orders provide for travel. The citation of authority also has been changed.
63.	§ 0913a	This subsection is amended to change a reference therein.
64.	§ 1106b	This subsection is amended by adding a prohibition against naming more than one respondent in a complaint of wrongs.
65.	§ 1202b	This subsection is amended to enumerate the present locations of admiralty officers.
66.	§ 1305b	This new subsection is added to clarify that special agreement forms are required when delivering prisoners under the Interstate Agreement on Detainers Act.
67.	§ 1309a	This subsection is amended by adding a reference to Appendix A-13-c.
68.	§ 1310	This section is amended by adding a reference to Appendix A-13-d.
69.	§ 1315 and Appendices A-13-c and A-13-d	This section is completely revised to accurately reflect the existing rules relating to delivery to civil authorities of personnel serving sentences of courts-martial. Appendices A-13-c and A-13-d are added to implement the revision of § 1315.
70.	§ 1324a	This subsection has been revised to remove the requirement for both parties to be present when interviewing personnel prior to civil litigation concerning matters relating to their official duties.
71.	§§ 1325d and 1325e	Subsection 1325d is added to give guidance for processing civilian personnel cases. It displaces former § 1325d, which becomes § 1325e.
72.	§ 1331	This section has been completely revised to provide guidance for the release of certain official records that are under the cognizance of the Assistant Judge Advocate General (Civil Law) in his role as systems manager. The subsection covering release of medical records is deleted as these records fall under another systems manager.

73.	§§ 1807 and 1816	These sections are amended to correct clerical errors.
74.	§§ 1810, 1811b, 1812c, and 1818	These sections and subsections are amended to reflect new citations for Customs Regulations in the Code of Federal Regulations.
75.	§ 1820b and Appendix A-18-a	This subsection is amended to increase the value limitations for gifts from American Samoa, Guam, and the Virgin Islands. The appendix also reflects this increase.
76.	Part G and §§ 1822, 1823, 1824, and 1825	The previous Part G, entitled "Gifts from Personnel Serving in a Combat Zone" was deleted because the federal statute (19 U.S.C. 1202) expired and the Customs Regulations implementing the statute were deleted. The deleted JAG Manual sections (1822, 1823, 1824, and 1825) permitted, under prescribed conditions, the exemption from tax and duty of bona fide gifts from military personnel serving in a combat zone. The parts and sections that follow have been relettered and renumbered.
77.	§ 1828	This new section provides information concerning metric measurements and their conversion into standard measurements.
78.	§ 1830	This section (old § 1833) is amended by removing gold coins, gold medals, and gold coin jewelry from the list of restricted articles because Executive Order 11825 now permits United States citizens to own gold.
79.	§ 1832	This section (old § 1835) is revised to reflect current changes to the Foreign Assets Control Regulations.
80.	Part K and §§ 1836 and 1837	This is a new part that contains importation regulations for foreign manufactured non-commercial pleasure boats.
81.	§ 1907d	This subsection is amended to correct an erroneous citation to the United States Code.
82.	Appendices A-19-a(1),	These appendices are amended to reflect a change of name from the "Navy Pilot Legal Assistance Pro-

	A-19-a(2), and A-19-a(3)	gram" to the "Navy Expanded Legal Assistance Program."
83.	§§ 2007a(17), 2007b, and 2016c(2)	These subsections are amended to include references to the Report Control Symbol assigned to the appropriate report. Subsection 2016c(2) is also amended to reflect the present JAG organizational structure.
84.	§ 2008b	This subsection is amended to include reference to naval legal service offices.
85.	§ 2016e(1)	This subsection discusses when a litigation report will normally be requested from JAG field offices and how it should be routed. It also reflects the Naval Legal Service Office concept and the organizational change within the Office of the Judge Advocate General.
86.	§ 2016e(2)	This subsection is a short reference to the guidance contained in section 1331.
87.	§§ 2019b and 2023	This subsection and section are amended to correct clerical errors.
88.	§ 2031b	This subsection is amended for clarity.
89.	Appendix A-20-e(1)	This appendix is amended to add to those authorities authorized to pay claims.
90.	Appendix A-20-f(1)	This appendix is amended to correct a minor clerical error.
91.	§ 2103b(2)	This subsection is amended because the present wording is overly broad and permissive and inconsistent with the intent of the Personnel Claims Act.
92.	§ 2103i	This subsection is amended: to limit automobile damage claims to $1,000; to restrict these claims to bases controlled and used by United States military activities or other DOD activities; to clarify the definition of "motor vehicles;" and, generally, to clarify the circumstances under which motor vehicle damages may be paid.
93.	§ 2104a	This subsection is amended to reflect the fact that the "double lock" rule may be modified when a claimant does "the best he could under the circumstances" to protect stolen money. Reimbursement is limited to a reasonable amount.

94.	§§ 2104c and 2104e	The previous subsections 2104c and 2104e have been deleted and the other subsections renumbered accordingly. These subsections were deleted because separate high-value household goods shipments are no longer permitted. See new subsection 2117d(3)(f).
95.	§ 2113a	This subsection is amended for clarity.
96.	§ 2117d(3)(f)	This new subsection: (1) eliminates the optional high-value shipment and only permits one household goods shipment per move; (2) requires personnel to prepare an inventory of each item of personal property of a value of $200 or more that would not appear on a carrier-prepared inventory; (3) requires personnel to have their inventory countersigned at the office where application for the move is made; and (4) provides stringent criteria to prove the value of any item over $200 if the inventory is not prepared or submitted or an item is omitted from the inventory.
97.	§ 2121f(2)(b)	This subsection is amended to reflect the correct name of a command.
98.	§ 2121g	This new subsection is added to provide guidance on handling payments from carriers when the payment for transportation and/or storage damage is less than the adjudicated amount of the claim.
99.	§ 2122e	This subsection is amended to reflect the fact that the small-claims procedure is not applicable to claims by Marine Corps personnel.
100.	§§ 2123 and 2124e	This section and subsection are amended to note that when military clothing is lost or destroyed incident to service and cannot be replaced in kind, normal claims procedures should be followed.
101.	§ 2124a	This subsection is revised both to amend the dollar amounts allocated to certain personnel claims adjudicating authorities and to delete other adjudicating authorities that no longer require such authority.
102.	§ 2124b	This subsection is revised to add additional Marine Corps personnel claims adjudicating authorities in order to expedite processing of these claims.

103.	§ 2128b	This subsection is amended to emphasize that the original file be forwarded when reconsideration of a claim is requested and to properly identify the appropriate adjudicating authority authorized to review requests for reconsideration of initial claims adjudication.
104.	§ 2128c	This new subsection is added to require that adjudicating authorities, when forwarding a claim file containing a reconsideration request, include the reasons and basis for the original adjudication and specifically address the issues raised by the claimant.
105.	Appendices A-21-i(1), A-21-i(2), and A-21-i(3)	These appendices have been amended to reflect the current list of commands that have received funding authority and accounting data from the Judge Advocate General.
106.	§ 2225a	This subsection is amended to indicate the appropriate Report Control Symbol assigned to the subject report.
107.	§ 2302	This section is amended for accuracy.
108.	§ 2403c(3)	This subsection is amended to include a reference to the Report Control Symbol assigned to NAVJAG Form 5890/12.
109.	§ 2408	This section is amended for clarity.
110.	§§ 2415a(2), (3), and (4)	This subsection is amended to conform to the present definition of a JAG designee in section 2401 and to delete a reference to the now-defunct law centers that have been replaced by naval legal service offices.
111.	§ 2419	This subsection is amended for clarity.
112.	§ 2502a(5)(a)	This subsection is amended to correct a citation.
113.	§ 2505	This section is added to discuss, in detail, the Uniform Recognition of Acknowledgments Act and its impact upon existing state laws governing sworn instruments.

114.	§ 2507a	This subsection is amended to reflect changes in Maine and New Hampshire state law covering what is required to make a legally effective seal.
115.	§ 2510	This section is amended to reflect changes in requirements for acknowledgments, oaths, and sworn instruments in the following states: Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, West Virginia, and Wisconsin.

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LIST OF AMENDMENTS INCLUDED IN CHANGE ONE

1.	§ 0101a	This amendment adds a new subparagraph (6), 'Jurisdiction over Offense," which states that the U.S. Supreme Court decision of O'Callahan v. Parker and subsequent COMA decisions interpreting this case have no application at a nonjudicial punishment hearing.
2.	§ 0101b(3)	This subsection is amended to clarify that the commanding officer of a ship has the authority to determine to what extent the commanding officer or officer in charge of an attached and embarked unit may exercise NJP authority.
3.	§ 0101d(1)	The first paragraph of § 0101d and all of § 0101d(1) are amended to incorporate reference to forms to be utilized prior to a Captain's Mast/Office Hours. The new procedure is intended to meet the requirements of the United States Court of Military Appeal's case of United States v. Booker, 5 M.J. 238 (CMA 1977) reconsidered, 5 M.J. 246 (CMA 1978). Appendices A-1-r, A-1-s, A-1-t, A-1-u, and A-1-v, all new, are designated to be used in conjunction with this section.
4.	§ 0101d(2)	This subsection is amended by adding a new subparagraph which discusses the nature of nonjudicial punishment, sets forth the standard of proof required, and indicates that while the rules of evidence do not apply, Article 31, UCMJ, does apply to statements obtained during the hearing.
5.	§ 0101d(3) Appendix A-1-u	This subsection is renumbered 0101d(4) and a new subsection 0101d(3) refers to the new Captain's Mast/Office Hours guide contained in Appendix A-1-u.

6.	§ 0101d(4)	This subsection is renumbered 0101d(5) and mentions the new appeals rights form (Appendix A-1-v).
7.	§ 0101e(1)	This subsection is amended to provide staying of nonjudicial punishment in the event of an accused's unauthorized absence.
8.	§ 0101e(2)	This subsection is amended to add the requirement that an accused give written notification of an intent to appeal in order to stay imposition of punishments involving restraint and extra duty, indicate that a court-martial punishment will interrupt the service of nonjudicial punishment; and to provide for staying the serving of nonjudicial punishment in the event of an accused's unauthorized absence and for the interruption of nonjudicial punishment involving restraint by the sentence of a court-martial.
9.	§ 0102e(4)	This subsection is amended to delete language that indicated that a reference to Navy Regulations in the sample punitive letter should be omitted for enlisted personnel.
10.	§ 0103b	This subsection is amended to delete an unnecessary paragraph and renumber the remaining paragraphs.
11.	§ 0112b	This subsection is amended by clarifying to whom requests for grants of immunity are to be forwarded, i.e, to any officer competent to convene a general court-martial for the trial of the witness for whom the immunity is requested.
12.	§ 0115a(2)	This subsection is amended so that its provisions clearly apply to nonjudical punishment.
13.	§ 0120b	This subsection is amended to require that a summarization of the military judge's in-

		quiry into the parties' understanding of the pretrial agreement be included in the record of trial.
14.	§ 0120d	This subsection is amended to remove the requirement to summarize the providency inquiry if the accused pleads guilty at a summary court-martial.
15.	§ 0121a(3) § 0133d(4)(a) Appendix A-1-j	These subsections and this Appendix are amended to provide for the utilization of a Special Power of Attorney for an accused, who did not request representation by an appellate defense counsel, to designate an attorney-in-fact as his agent to accept service of a U.S. Navy Court of Military Review decision.
16.	§ 0123c	This subsection is amended to delete the regulatory prohibition against a convening authority's consideration of prior conviction by summary court-martial when taking action on a record of trial.
17.	§ 0123g	This subsection is renumbered from § 0123h by deletion of old § 0123g. The old § 0123g implemented Dunlap v. Convening Authority, 23 U.S.C.M.A. 135, 48 C.M.R. 751 (1974), which established a rigid 90-day review requirement. United States v. Banks, 7 M.J. 92, (CMA 1979), which obviated the necessity for such automatic dismissal, reinstated the test for speedy review to one of prejudice to the accused. See United States v. Gray, 22 U.S.C.M.A. 443, 47 C.M.R. 484, (1974). Notwithstanding the deletion of old § 0123g, reviewing authorities should continue to ensure that courts-martial are expeditiously processed.
18.	§ 0124a(5)(c)	This section is amended to reflect the new NMPC-8 designation.

19.	§ 0125b(5)	This subsection was deleted. The old 0125 b(5) implemented *United States v. Brewer*, 24 U.S.C.M.A. 47, 51 C.M.R. 141 (1975), the continued efficacy of which is doubtful considering *United States v. Banks*, 7 M.J. 92 (CMA 1979). Accordingly, the test for speedy review is now one of prejudice to the accused. *See United States v. Gray*, 22 U.S.C.M.A. 443, 47 C.M.R. 484 (1973). Notwithstanding the deletion of old 0125b(5), reviewing authorities should continue to ensure that courts-martial are expeditiously processed.
20.	§ 0128	The report control symbols have been moved within the text of this section to appear next to the report numbers.
21.	§ 0133d(3)	This section is amended to provide for the "restricted delivery" registered mail to effect service of a decision of the Navy Court of Military Review.
22.	§ 0138	This section is modified to conform to 28 U.S.C. 1821 regarding witness fees.
23.	§ 0150 § 0154 § 0814c § 0814d § 2004c § 2006e § 2413	These sections are amended to indicate revised report forms.
24.	§ 0210b(4) § 0913a	These subsections are amended to reflect the revised OPNAVINST 5510.1F.
25.	§ 0308	This section is amended to eliminate unnecessary administrative burdens, clarify implementing procedures concerning the Privacy Act and reflect the proper report custodian.
26.	§ 0814b(2)	This subsection is amended to reflect the proper citation to the undated Manual of the Medical Department.

27.	§ 0814c	This subsection is amended to correct a clerical error.
28.	§ 0817	This section is amended to make the check list for fact-finding bodies applicable to death investigations.
29.	§ 0911d	This subsection is amended by an editorial change to emphasize that death cases may not be adequately reported by submitting a mere form only, but must be reported in accordance with full procedures of JAGMAN Chapter VIII.
30.	§ 0913b	This amendment corrects a reference to a superseded publication.
31.	§ 0913d	This amendment adds a new subsection to discuss when a JAGMAN investigation must be conducted in cases of fire, and what essential matters must be reported.
32.	§ 0913e	This amendment adds a new subsection which discusses reporting requirements for pollution incidents.
33.	§ 0913f Appendix A-9-a	This amendment adds a new subsection which encourages combined investigations into maritime incidents which involve two or more NATO member countries. Appendix A-9-a contains excerpts from the applicable NATO agreement.
34.	§ 1004c	This subsection is amended to raise the maximum amount of assessment a commanding officer can make under Article 139, UCMJ, from $250 to $750.
35.	§ 1305a § 2024a	These subsections are amended to correct clerical error.
36.	§ 1311	The section is deleted as the report discussed therein is no longer required.

37.	§ 1508a	This subsection is amended to provide correct form numbers and control symbols for required reports.
38.	§ 1821 § 1838	These sections are amended to reflect revised OPNAV instruction numbers.
39.	§ 1902	This section is amended by an editorial change.
40.	§ 1906	This section is amended by adding a new subsection on professional legal advice and ethics for legal assistance officers.
41.	§ 1910	This section is amended by adding three new subsections on compensation by, and solicitation and representation of persons entitled to legal assistance in civilian courts by Navy and Marine Corps military personnel and civilian employees.
42.	§ 1913	This section is amended to provide the Judge Advocate General with legal assistance report statistics on a fiscal year vice calendar year basis.
43.	§ 2004c	This subsection is amended to reflect a current report control symbol.
44.	§ 2024b	The subsection is amended to reflect Change 1 to DODDIR 5515.8 which reassigns responsibility for single-service claims in Australia from Navy to Air Force.
45.	§ 2030	This section is amended to correct a clerical error.
46.	§ 2052b § 2225	These sections are amended to reflect recent changes in claims payment procedures and correct clerical errors.
47.	§ 2104a	This subsection is amended to indicate that expenses associated with the late delivery of household goods are not payable under the Personnel Claims Act.

48.	§ 2113b	This subsection is amended by deleting the option of disposing salvage property outside of standard disposal channels.
49.	§ 2122b § 2421	These subsections are amended to delete unnecessary report control numbers.
50.	§ 2124a(6)	This subsection is amended to increase the personnel claim adjudicating authority of designated officers from $500 to $1000.
51.	§ 2124d	This subsection is amended to provide for partial payments when hardship exists and to allow Marine Corps commanding officers to request authority to make such payments by message to Headquarters Marine Corps.
52.	§ 2303b(3)	This subsection is amended to correct a clerical error.
53.	§ 2402b(2) § 2402c	These subsections are amended to reflect that the compromise and waiver limits under the Medical Care Recovery Act have been increased from $20,000 to $40,000.
54.	§ 2402e, § 2403, and Appendices A-24-d and A-24-f	This subsection and section are amended to provide for a single form which can be utilized in reporting the value of hospital and medical care provided to any patient when there could be an affirmative claim by the Government. Appendices A-24-d and A-24-f are revised to implement this change.
55.	§ 2403a	This subsection is added to insure that patients from whom statements are sought for Medical Care Recovery Act purposes are advised of their rights under the Privacy Act.
56.	§ 2408	This section is amended so that all recoveries for medical care costs will be included in the required monthly report.
57.	§ 2416d	This subsection is amended to permit nonappropriated-fund activities to directly

		receive monies recovered from affirmative claims involving damage to, or loss of, NAF property vice depositing all such recoveries to the General Treasury.
58.	§ 2502	This section is amended to add to the category of persons authorized to administer oaths those who are empowered to authorize the conduct of a search.
59.	§ 2510	This section has been revised to reflect current authority in the Code of South Carolina for acknowledgments, sworn instruments and recording of deeds or other instruments in writing.
60.	Appendices A-1-e(1) A-1-f(1)	These appendices are amended to include a clause in the memorandum of pretrial agreement to insure that the accused is aware that he may be subject to processing for an administrative discharge as a consequence of his guilty plea.
61.	Appendices A-1-i(1) thru A-1-i(7) A-3-b A-20-a(1) and (2) A-20-d A-21-b A-21-c(1) and (2)	These appendices are amended to reflect revised forms.
62.	Appendices A-1-1	This appendix, discussed in section 0148, is amended to reflect the changes previously effected by ALNAV 012/80
63.	Appendix A-1-q(1)	This appendix is amended to clarify the dress requirements for court-martial bailiffs.
64.	Appendix A-6-b(2)	The "Note" in the recommendations section of this Appendix is amended to clarify the

	requirements concerning forwarding of nonpunitive letters.
65. Appendix A-22-2	This appendix supersedes the old form.

MANUAL OF THE JUDGE ADVOCATE GENERAL

RECORD OF CHANGES

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Chapters VII, XIV, XVI, and XVII: RESERVED

PREFATORY NOTES

a. The Manual of the Judge Advocate General may be cited as, "JAGMAN 0101a(1)" or "JAGMAN A-1-b-(1)"

b. Forms, certain reference material, and technical guides are located in the Appendix, which is keyed by section number to the relevant chapter.

c. The words "Navy" and "naval," as used in this Manual, include the Marine Corps except where the context indicates differently.

d. The Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 1969 (Revised edition), are referred to as "UCMJ" and "MCM" respectively in this Manual.

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PART A–NONJUDICIAL PUNISHMENT

0101 GENERAL PROVISIONS

a. *Authority to impose.*

(1) *Multiservice commander.* In addition to the categories of officers authorized to impose nonjudicial punishment under Article 15(b), UCMJ, the commander of a multiservice command to whose staff or command members of the naval service are assigned may designate one or more naval units and shall for each such naval unit designate a commissioned officer of the naval service as commanding officer for the administration of discipline under Article 15, UCMJ. A copy of any such designation by the commander of a multiservice command shall be furnished to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to the Judge Advocate General.

(2) *General authority.* Pursuant to the authority of Article 15, UCMJ, and to the provisions of chapter XXVI, MCM, and except as provided in section 0101b, nonjudicial punishment may be imposed in the naval service for minor offenses as follows:

(a) *Upon officers and warrant officers.* Any commanding officer, including a commanding officer as designated pursuant to section 0101a(1) above, may impose upon officers of his command admonition or reprimand and restriction to certain specified limits, with or without suspension from duty, for not more than 15 consecutive days. Officers of the grade of major or lieutenant commander, or above, who are authorized to impose nonjudicial punishment, may in addition to admonition or reprimand, impose restriction for not more than 30 consecutive days. Only an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command may impose the additional punishments authorized by Article 15(b)(1)(B), UCMJ. *See* also section 0101a(4).

(b) *Upon other personnel.* Any commanding officer, including a commanding officer as designated pursuant to section 0101a(1) above, may impose upon enlisted men of his command, and any commissioned officer who is designated as officer in charge of a unit by Departmental Orders, Tables of Organization, manpower authorizations, orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached), or orders of the Senior Officer Present, may impose upon enlisted men assigned to his unit, admonition or reprimand and one or more of the punishments authorized by Article 15(b) (2) (A) through (G), UCMJ. Only commanding officers of the grade of major or lieutenant commander or above may impose the increased punishments authorized by Article 15(b) (2) (H), UCMJ.

(3) *Jurisdiction over individual.*

(a) *General rule.* At the time nonjudicial punishment is imposed, the accused must be a member of the command of the commanding officer, or of the unit of the officer in charge, who imposes the punishment. A person is "of the command" or "of the unit" if he is assigned or attached thereto, and a person may be "of the command" or "of the unit" of more than one command or unit at the same time, such as persons assigned or attached to commands or units for the purpose of performing temporary additional duty.

(b) *Issuance of letter of censure to party before fact-finding body.* A person who has been designated a party before a fact-finding body convened under these regulations (see chapter III) remains thereafter "of the command" of the unit or organization to which he was assigned or attached at the time of such designation for the purpose of imposition of the sole nonjudicial punishment of a letter of admonition or reprimand, even though for other purposes he may have been assigned or attached to another command before such letter was delivered to him. This status terminates automatically when all action contemplated by Article 15, UCMJ, including action on appeal, has been completed respecting the letter of admonition or reprimand.

(c) *Action when accused no longer with command.* Except as provided in subsection (b) above, if at the time nonjudicial punishment is to be imposed the accused is no longer assigned or attached to the unit, the alleged offense should be referred for appropriate action to a competent authority in the chain of command over the individual concerned. In the case of an officer, the referral normally should be to the officer who exercises general court-martial jurisdiction over him.

(d) *Nonjudicial punishment of reservists on active duty for training or inactive duty training.* If all aspects of the procedures specified by Article 15, UCMJ, and paragraph 133b, MCM, which require the presence of the accused are conducted prior to the termination of the drill or training period during which the act for which punishment is imposed occurs, the imposition of punishment may occur subsequent to the termination of such drill or training period at a time at which the reservist is not subject to the UCMJ. See paragraph 11d, MCM.

Even though no proceedings are conducted during the drill or training period during which the act for which punishment is imposed occurs, nonjudicial punishment may be imposed if all aspects of the procedures described by Article 15, UCMJ, and paragraph 133b, MCM, which require the presence of the accused are conducted on a subsequent period, or subsequent periods, of active duty for training or inactive duty training, unless there has been an intervening discharge or some equivalent change of status.

As a matter of policy, any physical restraint pending nonjudicial punishment, or imposed as nonjudicial punishment, shall not extend beyond the normal time of termination of a drill or training period.

(4) *Delegation to a "principal assistant" under Article 15(a), UCMJ.* With the express prior approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, a flag or general officer in command may delegate all or a portion of his powers under Article 15, UCMJ to a senior officer on his staff who is eligible to succeed to command in case of absence of such officer in command. To the extent of the authority thus delegated, the officer to whom such powers are delegated shall have the same authority as the officer who delegated the powers.

(5) *Withholding of Article 15, UCMJ punitive authority.* Unless specifically authorized by the Secretary of the Navy, commanding officers of the Navy and Marine Corps shall not limit or withhold the exercise by subordinate commanders of any disciplinary authority they might otherwise have under Article 15, UCMJ.

(6) *Jurisdiction over offense.* The U.S. Supreme Court decision of *O'Callahan v. Parker*, 295 U.S. 258 (1969), concerning "off-base" offenses, and subsequent United States Court of Military Appeals decisions interpreting *O'Callahan*, are inapplicable to nonjudicial punishment hearings. (Note: The Federal District Court in Hawaii has held to the contrary.)

b. *Limitations on imposition of nonjudicial punishment.*

(1) *Demand for trial.* A person in the Navy or Marine Corps who is attached to or embarked in a vessel does not have the right to demand trial by court-martial in lieu of nonjudicial punishment.

(2) *Cases previously tried in civil courts.* The provisions of section 0107e with respect to trial by summary court-martial of persons whose cases have been previously adjudicated in domestic or foreign criminal courts apply also to the imposition of nonjudicial punishment in such cases.

(3) *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, as a matter of policy while the unit is embarked therein, refrain from exercising his powers to impose nonjudicial punishment, referring all such matters to the commanding officer of the ship for disposition. This general policy is considered a necessary corollary to the latter's overall responsibility for the safety, well being, and efficiency of the ship. Nevertheless, the commanding officer of a ship of the Navy is authorized to determine whether, and under what circumstances, he may desire to permit a commanding officer or officer in charge of a unit attached to that ship, while embarked therein, to routinely exercise nonjudicial punishment authority. In consonance therewith, the commanding officer of a ship of the Navy may, for example, permit a commanding officer or officer in charge of a unit attached to and embarked on the ship to exercise his nonjudicial punishment authority, except for certain types of offenses, or offenses committed by certain categories of personnel, which will routinely be referred to the commanding officer of the ship for disposition.

This policy shall not be applicable to Military Sealift Command vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the officer in command of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the naval service embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the Uniform Code of Military Justice over members of such embarked units only in unusual cases concerning incidents occurring on board his ship.

(4) *Correctional custody.* This punishment shall not be imposed on persons in pay grade E-4 and above unless unsuspended reduction below pay grade E-4 is imposed.

(5) *Confinement on bread and water or diminished rations.* This punishment shall not be imposed on persons in pay grade E-4 and above unless unsuspended reduction below pay grade E-4 is imposed.

(6) *Extra duties.* Subject to the limitations set forth in paragraph 131c(6), MCM, this punishment shall be considered satisfied when the enlisted person shall have performed extra duties during available time in addition to performing his military duties. Normally the immediate commanding officer of the accused will designate the amount and character of the extra duties to be performed. The daily performance of the extra duties, before or after routine duties are completed, constitutes the punishment whether the particular daily assignment requires one, two or more hours, but normally extra duties should not extend to more than two hours per day. Except in cases of members of the Naval and Marine Corps Reserve performing inactive duty for training or active duty for training for a period of less than seven (7) days, extra duty shall not be performed on Sunday although Sunday counts in the computation of the period for which such punishment is imposed. Guard duty shall not be assigned as punishment.

(7) *Reduction in grade.* Under no circumstances may the punishment of reduction in grade be imposed except to the next inferior pay grade.

(8) *Arrest in quarters.* An officer or warrant officer undergoing this punishment shall not be required to perform duties involving the exercise of authority over any person who is otherwise subordinate to him.

(9) *Forfeiture and detention.* The imposition of forfeitures or detention of pay is subject to the provisions of paragraphs 131c(8) and (9), MCM. The provisions of law, however, which required enlisted member in pay grade E-4 (4 years or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired 30 June 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective 30 June 1973. Therefore, the $40.00 previously subtracted when computing the net amount of pay subject to forfeitures or detention for an enlisted person in pay grade E-4 (4 years or less service) or below, shall no longer be deducted.

c. *Nonpunitive measures.*

Commanding officers and officers in charge are authorized and expected to use nonpunitive measures to further the efficiency of their commands or units. These measures are not to be imposed as punishment for any military offense(s). Paragraph 128c, *MCM.* Nonpunitive measures may be administered either orally or in writing. Nonpunitive measures generally fall into three areas: extra military instruction, administrative withholding of privileges, and nonpunitive censure.

(1) *Extra military instruction.* This nonpunitive measure is defined as instruction in a phase of military duty in which an individual is deficient, intended for and directed towards the correction of that deficiency. It is a bona fide training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual's performance of duty. It may be assigned only if genuinely intended to accomplish that result. It is not to be used as a substitute for judicial (court-martial) action or nonjudicial punishment (NJP), and must be logically related to the deficiency in performance for which it was assigned. Extra military instruction (EMI) shall be conducted within the following limitations:

(a) EMI normally will not be conducted for more than two hours per day.

The accused [talked to a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours)] [gave up his/her right to talk to a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours)]. In completing the remainder of the form, the accused did not demand trial by court-martial in lieu of (captain's mast) (office hours).

If the accused is represented by a military or civilian lawyer as a personal representative at his/her (captain's mast) (office hours), the following example of a service-record entry may be made, after appropriate verification:

__________________ received punishment
(grade and name)
at (captain's mast) (office hours) on ______.
(date)
The accused was represented by a lawyer.

(2) *Hearing Requirements:*

An alleged offender in the Navy or the Marine Corps has the right to be accompanied at his Article 15 hearing by a personal representative to advise him and make a statement on his behalf. An accused's right to be accompanied by a personal representative does not create an obligation on the officer contemplating the imposition of nonjudicial punishment to provide such a personal representative to advise and speak on behalf of the accused. It is the responsibility of the accused to obtain and arrange for the presence of such a personal representative if he wishes one. Such a personal representative may, but need not be, a lawyer. The right to be accompanied by a personal representative does not constitute a right to representation in the sense of paragraph 48, *MCM, 1969 (Rev.).* The granting of this right does not imply that an Article 15 hearing is to become a formal adversary proceeding.

The elemental hearing requirements of paragraph 133b, *MCM*, are expanded to provide that, when there are controverted questions of fact concerning the suspected offense, witnesses, if present on the same ship, camp, station, or otherwise available, shall be called to testify if this can be done at no cost to the Government.

In addition to the specific hearing requirements prescribed in paragraph 133b, *MCM*, all Article 15 hearings shall, when requested by the alleged offender, be open to the public to the extent permitted by available space unless, in the opinion of the officer contemplating the imposition of nonjudicial punishment, military exigencies or security interests dictate otherwise. The officer contemplating the imposition of nonjudicial punishment may remove any person whose behavior has become disruptive to the proper conduct of the proceedings. The presence of representative members of the command as observers during all Article 15 hearings is authorized and encouraged as a method of dispelling erroneous perceptions which may exist concerning the integrity and fairness of the imposition of nonjudicial punishment. Nothing in this requirement shall preclude the alleged offender from exercising his right to confer privately with the officer contemplating the imposition of nonjudicial punishment to relate matters which, in the opinion of the alleged offender, are of a personal nature.

Office hours or captain's mast which results in nonjudicial punishment is not a criminal trial; it is an administrative proceeding. Its purpose is to determine whether an offense was committed and to provide punishment therefor, if appropriate. Such punishment is primarily corrective in nature, designed for minor misconduct in a nonjudicial forum, without the permanent stigma of a record of "federal conviction." As such, the standard of proof by which facts must be established at mast or office hours is by a "preponderance of the evidence," rather than "beyond a reasonable doubt," as it is at a court-martial. The rules of evidence contained in Chapter XXVII, MCM, 1969 (Rev.) do not apply at nonjudicial punishment hearings. Article 31(b) does apply to statements obtained during the hearing. See, paragraph 133b, MCM, 1969 (Rev.)

(3) *Captain's Mast/Office Hours Guide.* Appendix A-1-u is a guide for captain's mast/office hours hearings.

(4) *Nonjudicial Punishment Based on Report of Fact-Finding.*

If nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or other fact-finding body, a preliminary examination shall be made of such record to determine whether the individual concerned was accorded the rights of a party before such fact-finding body and, if so, whether such rights were accorded with respect to the act or omission for which nonjudicial punishment is contemplated. If the individual concerned was accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated, such punishment may be imposed without further proceedings. If the individual concerned was not accorded the rights of a party with respect to the offense for which punishment is contemplated, the impartial hearing prescribed in paragraph 133b, MCM, must be conducted. In the alternative, the record of the fact-finding body may be returned for additional proceedings during which the individual concerned shall be accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated.

(5) *Advice Subsequent to Imposition.*

The officer who imposes punishment under Article 15, UCMJ, shall again ensure that the offender is fully informed of his right to appeal. Appendix A-1-v is an Accused's Acknowledgment of Appeal Rights which should be signed and witnessed if one or more punishments is imposed.

e. *Effective date and execution of punishments.*

(1) *Forfeiture and detention of pay, and reduction in grade.* As provided in paragraph 131e, MCM, these punishments, if unsuspended, take effect on the date imposed. If suspended, and the suspension is later vacated, these punishments take effect for all purposes on the date the suspension is vacated. If, subsequent to the imposition of a punishment of forfeiture or detention of pay and prior to the execution of these punishments, an accused absents himself without authority, such period of absence shall interrupt the service of these punishments and shall be excluded in computing the service of these punishments. However, if a forfeiture or detention of pay is imposed while a prior punishment of forfeiture or detention of pay is still in effect, the prior punishment will be completed before the latter begins to run. A punishment to reduction in rate may be executed in the accused's absence.

(2) *Punishments involving restraint and extra duties.* The punishments of arrest in quarters, correctional custody, confinement on bread and water or diminished rations, extra duties, and restriction, if unsuspended, take effect when imposed upon an accused attached to or embarked in a vessel. When any such nonjudicial punishments are authorized for, and are imposed upon, an accused not attached to or embarked in a vessel, such punishments, if unsuspended, will take effect when imposed; provided however, that if an accused files an appeal of his punishment within a reasonable time from imposition (normally not more than 15 days), the punishment shall be stayed, pending completion of the appeal, if so requested by the accused in his appeal, and if the officer empowered to act on the request determines that there is a reasonable probability that the appeal will be granted in whole or in part. The authority to grant or deny a requested stay rests with the officer acting upon the appeal, but it may be delegated by him to his chief of staff, executive officer, or staff judge advocate. In any case, the decision to grant or deny a requested stay must be made within 72 hours of receipt of the appeal by the officer empowered to act thereon or the stay is automatically granted. If subsequent to the imposition of and prior to the execution of these punishments, an accused absents himself without authority, such period of absence shall interrupt the service of these punishments and shall be excluded in computing the service of these punishments. The execution of any previously imposed nonjudicial punishment involving restraint will normally be interrupted by a subsequent nonjudicial punishment involving restraint. Thereafter, the unexecuted portion of the prior punishment will be executed. The officer imposing the subsequent punishment may, however, order that the prior punishment be completed prior to service of the subsequent punishment. A sentence imposed by a court-martial will also interrupt the service of any nonjudicial punishment involving restraint. When the judicially imposed punishment has been served, the unexecuted nonjudicial punishment will be completed. In addition, commanding officers and officers in charge may, when adequate facilities are not available or when the exigencies of the service require, defer execution of correctional custody, and confinement on bread and water or diminished rations, for a reasonable period of time, not to exceed fifteen days, after imposition. Also, commanding officers and officers in charge may, if the accused is found to be not medically fit for the service of the punishments of correctional custody or confinement on bread and water or diminished rations, defer, for a period not to exceed fifteen days, the execution of the punishment until the accused is determined to be medically fit to serve the punishment.

(3) *Admonition and reprimand.* These punishments take effect when imposed. A letter of censure is considered to be imposed when delivered to the offender.

f. *Appeals.*

(1) *Time.*

(a) In accordance with paragraph 135, MCM, an appeal not made within a reasonable time brought out at the mast or office hours hearing of the case, the endorsement should so state and include any comment in regard thereto made by the appellant at the mast or office hours. Any other adverse factual information set forth in the endorsement, unless it recites matter already set forth in official service record entries, should be referred to appellant for comment, if practicable, and he should be given an opportunity to submit a statement in regard thereto or state that he does not wish to make any statement.

(c) as an enclosure, a copy of the completed mast report form (NAVPERS 1626/7 (Rev. 5-72)) or office hours report form (NAVMC 10132PD (Rev. 7-66)).

(d) as enclosures, copies of all documents and signed statements which were considered as evidence at the mast or office hours hearing, or if the nonjudicial punishment was imposed on the basis of the record of a court of inquiry or other factfinding body in accordance with subsection 0101d(3), a copy of that record, including the findings of fact, opinions and recommendations, together with copies of any endorsements thereon.

(e) as an enclosure, a copy of the appellant's record of performance as set forth on service record page 9 (Navy) or NAVMC 118(3) (Marine).

g. *Records of punishment.* The records of nonjudicial punishment shall be maintained and disposed of in accordance with paragraph 133c, MCM and implementing regulations issued by the Chief of Naval Personnel and the Commandant of the Marine Corps. The forms used for the Unit Punishment Book are NAVPERS 1626/7 (Rev. 5-72) and NAVMC 10132PD (Rev. 7-66).

h. *Definition of "successor in command."* For the purposes of Article 15, UCMJ and this chapter, the term "successor in command" refers to an officer succeeding to the command by being detailed or succeeding thereto as described in U.S. Navy Regulations. The term is not limited to the officer next succeeding. See section 0101j.

i. *Punishment not to be increased.* As provided in paragraph 128d, MCM a punishment once imposed may not be increased. In addition, punishment may not be withdrawn for the purpose of imposing a more severe punishment.

j. *Suspension, mitigation, remission, and vacation of suspension.*

(1) Authority to suspend, mitigate, and remit. The authority of the officer who imposed the punishment, his successor in command, and superior authority to suspend, mitigate, remit and set aside punishments is discussed in paragraphs 134 and 135, MCM. When a person upon whom nonjudicial punishment has been imposed is thereafter, by competent transfer orders, assigned to another command, unit, or activity, the receiving commanding officer (or officer in charge) and his successor in command, may under article 15(d), UCMJ, and the conditions set forth in paragraph 134, MCM, exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment.

(2) *Probationary period.* All suspensions shall be for a definite period of time, but the period of suspension shall not exceed six months. The running of the period of suspension of the punishment is interrupted by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the punishment. The running of the period of suspension of punishment resumes as of the date the probationer's unauthorized absence ends or as of the date of the interruption due to initiation of vacation proceedings if proceedings to vacate suspension of the punishment are concluded without vacation of the punishment. Similarly, the running of the period of suspension resumes as of the date of the interruption due to initiation of vacation proceedings as to any portion of the punishment not vacated as a result of the proceedings.

(3) *Vacation of suspension.* The authority of the officer who imposed the punishment, or his successor in command, to vacate a suspension of nonjudicial punishment is established in paragraph 134, MCM. All actions to vacate the suspension of nonjudicial punishment must be predicated on an act of misconduct occurring within the period of suspension. In any case, the order of vacation of the suspension must be issued within ten working days of the commencement of the vacation proceedings. Hearing requirements applicable to vacation proceedings are set forth in paragraph 134, MCM.

0102 LETTERS OF CENSURE

a. *General.* "Censure" is a generic term applicable to adverse reflection upon or criticism of an individual's character, conduct, performance, or military appearance. Censure may be punitive or nonpunitive. Punitive censure is imposed as commanding officer's nonjudicial punishment or as the result of a sentence by court-martial. In increasing order of severity, there are two degrees of punitive censure, namely, "admonition" and "reprimand." Nonpunitive censure is provided for in paragraph 128, MCM, and in section 0101c. When imposed upon officers, punitive admonition or reprimand is required to be by written communication. When imposed upon enlisted personnel as nonjudicial punishment, punitive admonition or reprimand may be by either oral or written communication. Punitive admonitions or reprimands issued to enlisted personnel in execution of court-martial sentences are required to be in writing. Copies of punitive letters of admonition or reprimand, unless withdrawn or set aside, will be filed in the official records of the individuals to whom they are addressed and recorded in departmental records. As provided in section 0101i, once a letter of admonition or reprimand has been imposed, it may not be increased in severity or withdrawn to impose a more severe punishment. The remaining provisions of this section do not apply to oral censures of enlisted personnel or, unless specifically noted, to court-martial sentences involving admonition or reprimand.

b. *Administrative letters of censure by the Secretary of the Navy.* In addition to the censures discussed in section 0102a, the Secretary of the Navy may, by means of a written communication, administratively censure persons in the naval service without reference to Article 15, UCMJ. Unless otherwise directed, a copy of the communication will be filed in the official record of the person censured and recorded in departmental records. The provisions of Article 15, UCMJ, chapter XXVI, MCM, and sections 0101 and 0102 of this Manual (including the right of appeal) are not applicable to administrative censure by the Secretary of the Navy. However, if the person censured is an officer and a copy of the communication is to be filed in his official record and recorded in departmental records, the officer being censured may submit such official statement as he may choose to make in reply. Any such reply shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Replies shall not contain countercharges.

c. *Internal departmental responsibility.* Correspondence, records, and files in the Department of the Navy that relate to letters of admonition or reprimand are personnel matters under the primary cognizance of the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate.

d. *Procedure.*

(1) *Issuing authority.* Where an officer has committed an offense which warrants a punitive letter of admonition or reprimand, the immediate commanding officer may, at his discretion, but subject to paragraphs 132 and 133, MCM, issue the letter or refer the matter through the chain of command, normally to the superior who exercises general court-martial jurisdiction and who has command over the prospective addressee (see section 0101a(3)). Consideration must be given to the fact that the degree of severity and effect of punitive admonition or reprimand increases proportionately with the degree of superiority of the officer in command who issues the letter.

(2) *Hearing requirement.* Subject to the provisions of Article 15(a), UCMJ, paragraph 132, MCM, and section 0101b regarding demand for trial, a punitive letter may be issued, or its issuance recommended to higher authority, on the basis of an investigation or court of inquiry for acts or omissions for which the individual was accorded the rights of a party or on the basis of mast or office hours prescribed in paragraph 133b, MCM (see section 0101d). When mast or office hours is conducted, the officer conducting the hearing shall prepare a report thereof. The report shall include a summary of the testimony of witnesses, statements and affidavits submitted to the officer holding the hearing, and a description of items of information in the nature of physical or documentary evidence considered at the hearing.

e. *Content of letter.*

(1) *General.* A punitive letter of admonition or reprimand issued pursuant to Article 15, UCMJ may be imposed only for minor offenses (see paragraph 128b, MCM). Such offenses include only those acts or omissions constituting offenses under the punitive articles of the UCMJ. The letter must set forth the facts constituting the offense but need not refer to any specific punitive article of the UCMJ, nor must it satisfy the tests for legal sufficiency required of court-martial specifications. Each letter should contain sufficient specific facts, without regard to the existence of other documents, to apprise a reader of all relevant

may be rejected on that basis by the officer to whom the appeal was addressed. In the absence of unusual circumstances, an appeal made more than 15 days after the punishment was imposed may be considered as not having been made within a reasonable time. In computing this appeal period, allowance shall be made for the time required to transmit communications pertaining to the imposition of nonjudicial punishment and the appeal therefrom through the mails. This appeal period commences to run from the date of the imposition of the punishment, even though all or any part of the punishment imposed is suspended.

(b) If unusual circumstances exist which make it impracticable or extremely difficult for the offender to prepare and submit his appeal within the 15-day period, he should immediately advise the officer who imposed the punishment of such circumstances and request an appropriate extension of time within which to submit his appeal. In the absence of such a request, an appeal submitted after the 15-day period will normally be considered as not having been made within a reasonable time. Upon the receipt of such a request, the officer who imposed the punishment shall advise the offender that an extension of time is or is not granted.

(2) *To whom made when officer who imposed the punishment is in a Navy chain of command.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM shall, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the officer who imposed the punishment, be forwarded to the area coordinator or to a subordinate commander authorized to convene general courts-martial designated by the area coordinator for this purpose. When the cognizant area coordinator or the designated subordinate commander is not superior in rank or command to the officer who imposed the punishment or when the punishment is imposed by a commanding officer who is an area coordinator or a designated subordinate commander, the appeal shall be forwarded to the officer authorized to convene general courts-martial and next superior in the chain of command to the officer who imposed the punishment. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the unit at the time of the forwarding of the appeal.

(3) *To whom made when officer who imposed the punishment is in the chain of command of the Commandant of the Marine Corps.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM, shall in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the officer who imposed the punishment, be made to the officer who is the next superior in the chain of command to the officer who imposed the punishment. This shall be the case without regard to whether the appellant is, at the time of his appeal, a member of an organization within that chain of command. In those cases in which the Commandant of the Marine Corps is the next superior in the chain of command and in which the officer who imposed punishment is not a general officer in command, the appeal shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest the officer who imposed the punishment.

(4) *To whom made when commanding officer is a commander of a multiservice command.* An appeal from nonjudicial punishment imposed by an officer of the Marine Corps designated as a commanding officer pursuant to section 0101a(1) shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest and superior in grade to the officer who imposed the punishment. An appeal from nonjudicial punishment imposed by a naval officer designated as a commanding officer pursuant to section 0101a(1) shall be made to the nearest area coordinator or to a subordinate commander authorized to convene general courts-martial designated by the area coordinator for this purpose. However, when such area coordinator or designated subordinate commander is not superior in grade to the officer who imposed the punishment, the appeal shall be to the naval flag officer in command geographically nearest and superior in grade to the officer who imposed the punishment.

(5) *Delegation of authority to act on appeals.* Such authority may be delegated in accordance with the provisions of section 0101a(4).

(6) *Prohibited and inappropriate actions.* An officer who has delegated his nonjudicial punishment powers to a principal assistant under section 0101a(4) may not act on an appeal from punishment imposed by such principal assistant. In such cases and in other cases where it may be inappropriate for the officer designated by section 0101f(2) or (3) to act on the appeal, (as where an identity of persons or staff may exist with the command which imposed the punishment) such fact should be noted in forwarding the appeal.

(7) *Procedures.* When the officer who imposed the punishment is not the offender's immediate commanding officer, the latter may forward the appeal directly to the officer who imposed the punishment for forwarding under sections 0101f(2), (3) or (4). Similarly, the action of the superior on appeal may be forwarded by the officer who imposed the punishment directly to the offender's commanding officer for delivery. Copies of the correspondence should be provided for intermediate authorities in the chain of command.

In any case where nonjudicial punishment is imposed on the basis of information contained in the record of a court of inquiry or fact-finding body, a copy of the record, including the findings, opinions and recommendations, together with copies of endorsements thereon, shall, except where the interests of national security may be adversely affected, be made available to the individual concerned for his examination in connection with the preparation of an appeal. In case of doubt, the matter shall be referred to the Judge Advocate General for advice.

(8) *Contents.* In accordance with the requirements of paragraph 135, *MCM, 1969 (Rev.)*, appeals will be submitted in writing and may include the appellant's reasons for regarding the punishment as unjust or disproportionate. The decision to vacate suspension of nonjudicial punishment, however, is not appealable under the provisions for appeal of nonjudicial punishment. The contents of the forwarding endorsement of the officer who imposed the punishment should normally include:

(a) comment on any assertions of fact contained in the letter of appeal which the officer who imposed the punishment considers to be inaccurate or erroneous.

(b) recitation of any facts concerning the offenses which are not otherwise included in the appeal papers. If such factual information was brought out at the mast or office hours hearing of the case, the endorsement should so state and include any comment in regard thereto made by the appellant at the mast or office hours. Any other adverse factual information set forth in the endorsement, unless it recites matter already set forth in official service record entries, should be referred to appellant for comment, if practicable, and he should be given an opportunity to submit a statement in regard thereto or state that he does not wish to make any statement.

(c) as an enclosure, a copy of the completed mast report form (NAVPERS 1626/7 (Rev. 8-81) or office hours report form (NAVMC 10132PD (Rev. 7-66)).

(d) as enclosures, copies of all documents and signed statements which were considered as evidence at the mast or office hours hearing, or if the nonjudicial punishment was imposed on the basis of the record of a court of inquiry or other fact-finding body in accordance with subsection 0101d(3), a copy of that record, including the findings of fact, opinions and recommendations, together with copies of any endorsements thereon.

(e) as an enclosure, a copy of the appellant's record of performance as set forth on service record page 9 (Navy) or NAVMC 118(3) (Marine).

(9) *Rehearing after appeal.* A superior authority, in acting on an appeal, may set aside a nonjudicial punishment, due to procedural error not amounting to a finding of insufficient evidence to impose nonjudicial punishment. In such event, if the superior authority specifically authorizes such in his action on the appeal, additional proceedings under Article 15, UCMJ, may be conducted by the officer who imposed the original nonjudicial punishment or his successor in command with regard to those offenses for which the appellant received nonjudicial punishment in the original proceeding. Any punishment imposed during such additional proceedings may be no more severe than that awarded during the original proceedings, unless other offenses, which occurred subsequent to the date of the nonjudicial punishment set aside, are included in the offenses charged. An individual, whether or not attached to or embarked in a vessel, has no right to demand trial by court-martial for those offenses for which the rehearing was authorized (unless the appeal was granted on a claim pertaining to the validity of the accused's prior waiver of the right to demand trial by court-martial); but an individual who is not attached to or embarked in a vessel retains the right to demand trial by court-

martial for any added offense which occurred subsequent to the date of the nonjudicial punishment which was set aside.

g. *Records of punishment.* The records of nonjudicial punishment shall be maintained and disposed of in accordance with paragraph 133c, MCM and implementing regulations issued by the Chief of Naval Personnel and the Commandant of the Marine Corps. The forms used for the Unit Punishment Book are NAVPERS 1626/7 (Rev. 8-81) and NAVMC 10132PD (Rev. 7-66).

h. *Definition of "successor in command."* For the purposes of Article 15, UCMJ and this chapter, the term "successor in command" refers to an officer succeeding to the command by being detailed or succeeding thereto as described in U.S. Navy Regulations. The term is not limited to the officer next succeeding. See section 0101j.

i. *Punishment not to be increased.* As provided in paragraph 128d, MCM a punishment once imposed may not be increased. In addition, punishment may not be withdrawn for the purpose of imposing a more severe punishment.

j. *Suspension, mitigation, remission, and vacation of suspension.*

(1) *Authority to suspend, mitigate, and remit.* The authority of the officer who imposed the punishment, his successor in command, and superior authority to suspend, mitigate, remit and set aside punishments is discussed in paragraphs 134 and 135, MCM. When a person upon whom nonjudicial punishment has been imposed is thereafter, by competent transfer orders, assigned to another command, unit, or activity, the receiving commanding officer (or officer in charge) and his successor in command, may under article 15(d), UCMJ, and the conditions set forth in paragraph 134, MCM, exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment.

(2) *Probationary period.* All suspensions shall be for a definite period of time, but the period of suspension shall not exceed six months. The running of the period of suspension of the punishment is interrupted by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the punishment. The running of the period of suspension of punishment resumes as of the date the probationer's unauthorized absence ends or as of the date of the interruption due to initiation of vacation proceedings if proceedings to vacate suspension of the punishment are concluded without vacation of the punishment. Similarly, the running of the period of suspension resumes as of the date of the interruption due to initiation of vacation proceedings as to any portion of the punishment not vacated as a result of the proceedings.

(3) *Vacation of suspension.* The authority of the officer who imposed the punishment, or his successor in command, to vacate a suspension of nonjudicial punishment is established in paragraph 134, MCM. All actions to vacate the suspension of nonjudicial punishment must be predicated on an act of misconduct occurring within the period of suspension. In any case, the order of vacation of the suspension must be issued within ten working days of the commencement of the vacation proceedings. Hearing requirements applicable to vacation proceedings are set forth in paragraph 134, MCM.

k. *Announcement of disposition of nonjudicial punishment.* Publication of nonjudicial punishment results is rooted in the reasonable belief that it serves to deter other members of the organization from committing similar offenses and that it has salutary effects upon the morale of the organization. Accordingly, commanding officers may, if the interests of the rehabilitation of the offender, good order, high morale, and perceptions of fairness so warrant, establish a policy whereby the disposition of nonjudicial punishment cases should be announced. Announcement may be, for example, by any or all of the following methods:

(1) *Plan of the Day publication.* The name, rate, offense(s), and disposition of the alleged offender may be published in the plan of the day within one month of the imposition of nonjudicial punishment.

(2) *Bulletin boards.* The name, rate, offense(s), and disposition of the individual case may be posted within a month of the imposition of nonjudicial punishment on command bulletin boards.

(3) *Daily formation (Marine Corps) or morning quarters (Navy).* The name, rate, offense(s), and disposition of nonjudicial punishment cases may be announced at daily formations or morning quarters.

0102 LETTERS OF CENSURE

a. *General.* "Censure" is a generic term applicable to adverse reflection upon or criticism of an individual's character, conduct, performance, or military appearance. Censure may be punitive or nonpunitive. Punitive censure is imposed as commanding officer's nonjudicial punishment or as the result of a sentence by court-martial. In increasing order of severity, there are two degrees of punitive censure, namely, "admonition" and "reprimand." Nonpunitive censure is provided for in paragraph 128, MCM, and in section 0101c. When imposed upon officers, punitive admonition or reprimand is required to be by written communication. When imposed upon enlisted personnel as nonjudicial punishment, punitive admonition or reprimand may be by either oral or written communication. Punitive admonitions or reprimands issued to enlisted personnel in execution of court-martial sentences are required to be in writing. Copies of punitive letters of admonition or reprimand, unless withdrawn or set aside, will be filed in the official records of the individuals to whom they are addressed and recorded in departmental records. As provided in section 0101i, once a letter of admonition or reprimand has been imposed, it may not be increased in severity or withdrawn to impose a more severe punishment. The remaining provisions of this section do not apply to oral censures of enlisted personnel or, unless specifically noted, to court-martial sentences involving admonition or reprimand.

b. *Administrative letters of censure by the Secretary of the Navy.* In addition to the censures discussed in section 0102a, the Secretary of the Navy may, by means of a written communication, administratively censure persons in the naval service without reference to Article 15, UCMJ. Unless otherwise directed, a copy of the communication will be filed in the official record of the person censured and recorded in departmental records. The provisions of Article 15, UCMJ, chapter XXVI, MCM, and sections 0101 and 0102 of this Manual (including the right of appeal) are not applicable to administrative censure by the Secretary of the Navy. However, if a copy of the communication is to be filed in the official record of the person punished and recorded in departmental records, the individual may submit an official statement in reply. Any such reply shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Replies shall not contain countercharges.

c. *Internal departmental responsibility.* Correspondence, records, and files in the Department of the Navy that relate to letters of admonition or reprimand are personnel matters under the primary cognizance of the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate.

d. *Procedure.*

(1) *Issuing authority.* Where an officer has committed an offense which warrants a punitive letter of admonition or reprimand, the immediate commanding officer may, at his discretion, but subject to paragraphs 132 and 133, MCM, issue the letter or refer the matter through the chain of command, normally to the superior who exercises general court-martial jurisdiction and who has command over the prospective addressee (see section 0101a(3)). Consideration must be given to the fact that the degree of severity and effect of punitive admonition or reprimand increases proportionately with the degree of superiority of the officer in command who issues the letter.

(2) *Hearing requirement.* Subject to the provisions of Article 15(a), UCMJ, paragraph 132, MCM, and section 0101b regarding demand for trial, a punitive letter may be issued, or its issuance recommended to higher authority, on the basis of an investigation or court of inquiry for acts or omissions for which the individual was accorded the rights of a party or on the basis of mast or office hours prescribed in paragraph 133b, MCM (see section 0101d). When mast or office hours is conducted, the officer conducting the hearing shall prepare a report thereof. The report shall include a summary of the testimony of witnesses, statements and affidavits submitted to the officer holding the hearing, and a description of items of information in the nature of physical or documentary evidence considered at the hearing.

e. *Content of letter.*

(1) *General.* A punitive letter of admonition or reprimand issued pursuant to Article 15, UCMJ may be imposed only for minor offenses (see paragraph 128b, MCM). Such offenses include only those acts or omissions constituting offenses under the punitive articles of the UCMJ. The letter must set forth the facts constituting the offense but need not refer to any specific punitive article of the UCMJ, nor must it satisfy the tests for legal sufficiency required of court-martial specifications. Each letter should contain sufficient specific facts, without regard to the existence of other documents, to apprise a reader of all relevant

facts and circumstances surrounding the offense. General conclusions, such as "gross negligence," "unofficer-like conduct," or "dereliction of duty," are valueless unless accompanied by specific facts upon which they are based. Sample letters of reprimand and admonition are set forth for guidance in Appendix section 1-b and 1-c.

(2) *References.* In all punitive letters of admonition or reprimand, reference should be made to all prior proceedings and correspondence upon which they are based. Reference should also be made to applicable laws and regulations, including the MCM and this section. Particular reference should be made to the hearing afforded the offender. Where applicable, the letter shall include a statement that the recipient has been advised that he has the right to demand trial by court-martial in lieu of nonjudicial punishment and that he has not demanded such trial. See Article 15a, UCMJ.

(3) *Classification (security).* Every reasonable effort will be made to exclude specific details requiring security classification from punitive letters of admonition or reprimand. Unless it contains classified matter, a letter of censure shall be designated "For Official Use Only."

(4) *Notification of right to appeal and right to submit statement.* All punitive letters of admonition or reprimand, except letters issued in execution of a court-martial sentence as described in section 0123d, shall contain the following paragraphs:

"You are hereby advised of your right to appeal this action to the next superior authority, the______________________________ via *[here insert the official designation of the commanding officer issuing the letter or, if he is not the immediate commanding officer of the offender, the official designations of the immediate commanding officer of the offender and the commanding officer issuing the letter]* in accordance with the provisions of Article 15(e) of the Uniform Code of Military Justice, paragraph 135 of the Manual for Courts-Martial, and section 0102f of the Manual of the Judge Advocate General.

"If, upon full consideration, you do not desire to avail yourself of this right to appeal, you are directed to so inform the issuing authority in writing within 15 days after the receipt of this letter."

"If, upon full consideration, you do desire to appeal from the issuance of this letter, you are advised that an appeal must be made within a reasonable time and that, in the absence of unusual circumstances, an appeal made more than 15 days after the receipt of this letter may be considered as not having been made within a reasonable time. If, in your opinion, unusual circumstances exist which make it impracticable or extremely difficult for you to prepare and submit your appeal within the 15-day period, you shall immediately advise the officer issuing this letter of such circumstances and request an appropriate extension of time within which to submit your appeal. Failure to receive a reply to such request will not, however, constitute a grant of such extension of time within which to submit your appeal.

"In all communications concerning an appeal from the issuance of this letter, you are directed to state the date of your receipt of this letter.

"Unless withdrawn, or set aside by higher authority, a copy of this letter will be placed in your official record in [the Bureau of Naval Personnel] [Headquarters, U.S. Marine Corps.] You are therefore privileged, pursuant to U.S. Navy Regulations, to forward within 15 days after receipt of final determination of your appeal or after the date of your notification of your decision not to appeal, whichever may be applicable, such statement concerning this letter as you may desire for inclusion in your record. If you elect not to submit a statement, you shall so state officially in writing within the time above prescribed. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement may not contain countercharges. Your reporting senior is required to make notation of this letter in your fitness report submitted next after the issuance of this letter has become final, either by decision of higher authority upon appeal or by your decision not to appeal." [Omit last sentence in cases involving enlisted personnel.]

f. *Appeals.* The following special rules are applicable to appeals involving punitive letters of admonition or reprimand (in addition to those rules contained in section 0101f):

(1) A copy of the report of mast or office hours shall be provided the individual upon his request except where the interests of national security may be adversely affected. In any event a copy shall be made available to him for his use in preparation of a defense or appeal. See section 0101f for similar rules concerning a copy of the record of an investigation or court of inquiry.

(2) In forwarding an appeal from a punitive letter of admonition or reprimand (see section 0101f(4)), the officer who issued the letter shall attach to the appeal a copy of the punitive letter and the record of investigation or court of inquiry or report of hearing on which the letter is based. The appeal shall be forwarded via the chain of command to the superior to whom the appeal is made. The superior to whom the appeal is made may direct additional inquiry or investigation into matters raised by the appeal if he deems such action necessary in the interests of justice.

(3) Appeals from a letter of admonition or reprimand imposed as nonjudicial punishment shall be forwarded as specified in section 0101f.

(4) Upon determination of the appeal, the superior shall advise the appellant of the action taken via his immediate commanding officer with copies of the action to officers in the chain of command through whom the appeal was forwarded. He shall also return all papers directly to the commander who issued the letter.

g. *Forwarding letter to Department.* Upon adverse determination of any appeal taken, the lapse of a reasonable time after issuance (see section 0101f), or upon receipt of the addressee's statement that he does not desire to appeal, a copy of the punitive letter of censure and such other documents as may be required by the Chief of Naval Personnel or the Commandant of the Marine Corps, together with such statement as the addressee may desire to make or his written declaration that he does not desire to make a statement, shall be forwarded via the chain of command to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. The command to which the addressee of the letter is then attached (if different from the forwarding command) and superior authority who took action on appeal pursuant to section 0101f and 0102f(3), whether or not in the chain of command, shall be included as via addressee(s). If the letter of censure is not sustained on appeal, a copy of the letter shall not be filed in the official record of the member concerned.

It is the responsibility of the command issuing a letter of admonition or reprimand to assemble and forward at one time all the foregoing documents. A copy of the forwarding letter shall be provided for each via addressee.

h. *Cancellation.* Except in certain highly infrequent situations, material properly placed in an officer's or enlisted member's official record is not removed therefrom or destroyed. When a letter of admonition or reprimand has been issued under Article 15, UCMJ and filed in the addressee's official record and it is shown that factual error occurred or that other sound reasons indicate that the punishment resulted in a clear injustice, the officers referred to in section 0101j may cancel or direct cancellation of the letter of admonition or reprimand. The authority (i.e., the office as distinguished from the former incumbent) which issued such a letter of admonition or reprimand may also cancel such a letter. In these cases, cancellation will be accomplished by issuing a second letter to the officer concerned announcing the cancellation of the letter of admonition or reprimand and setting forth in detail the reason prompting such cancellation. Copies of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to other addressees to whom copies of the original letter of censure may have been directed. The copy of the letter of admonition or reprimand and any reference thereto filed in the recipient's official record shall then be removed and destroyed.

If a letter of admonition or reprimand is canceled by superior authority before a copy of the original of such letter has been received by the Chief of Naval Personnel or the Commandant of the Marine Corps, no copy of the letter of admonition or reprimand will be filed in the member's official record. If the cancellation occurs after the copy of the letter of admonition or reprimand has been forwarded to the Department, a copy of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. Upon receipt of the copy of the letter of cancellation, copies of the letter of admonition or reprimand shall not be filed in or, if already filed, shall be removed from the member's official record and destroyed. The order or letter of cancellation or a copy thereof shall not be filed in the member's official records. In other cases, physical removal of letters of admonition or reprimand and other documents in official records will normally be accomplished only by the Secretary of the Navy acting through the Board for Correction of Naval Records. However, if a letter of censure is filed inadvertently by reason of clerical error or mistake of fact, such document may be removed as authorized by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

i. *Public reprimands-private reprimands.* For historical purposes and understanding of the captioned types of censure, brief comment is supplied thereon. Under Article 24 of the Articles for the Government of the Navy (superseded by the Uniform Code of Military Justice), "private reprimand" was one of the punishments specified as being within the authority of a commanding officer to impose upon officers under his command. The word "private" was employed to distinguish a formal letter of reprimand addressed to an individual officer without general publicity from a "public reprimand," i.e., one published verbatim throughout the naval service. Omission of the word "private" preceding "admonition or reprimand" in Article 15, UCMJ does not constitute authority to commanding officers to issue "public reprimands," which are looked upon with disfavor by the Department of the Navy.

PART B–CONVENING COURTS-MARTIAL

0103 DESIGNATION OF ADDITIONAL CONVENING AUTHORITIES

a. *General courts-martial.* In addition to those officers authorized by Article 22(a)(3) through (5) and (7), UCMJ, the following officers are, under the authority granted to the Secretary of the Navy by Article 22(a)(6), UCMJ, designated as empowered to convene general courts-martial:

(1) All flag or general officers, or their immediate temporary successors, in command of units or activities of the Navy or Marine Corps.

(2) The following officers or their successors in command:

Chief of Naval Operations
Vice Chief of Naval Operations
Commandant of the Marine Corps
Commander, Service Group One
Commander, Service Force, Sixth Fleet
Commanders, Functional Wings
Commanders, Fleet Air Commands
Commanders, Naval Bases
Commander, U.S. Naval Activities, Spain
Commander, U.S. Naval Activities, United Kingdom
Commanding Officer, U.S. Naval Support Activity, Naples
Commander, Submarine Squadron Fourteen
Commander, Military Sealift Command, Pacific
Commander, Naval Weapons Station, China Lake
Commander, Naval Education and Training Center, Newport, Rhode Island
Commander, Naval Training Center, Great Lakes, Illinois
Commander, Naval Training Center, San Diego, California
Commander, Naval Training Center, Orlando, Florida
Commanding Officer, Naval Station, Treasure Island, San Francisco, California
Commanding Officer, Naval Air Station, Key West, Florida

(3) The Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, are hereby designated and empowered to exercise limited general court-martial jurisdiction for the purpose of performing the functions described in paragraphs 100c, 102, and 107, MCM. *See* section 0129a(2) concerning the clemency powers of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas.

(4) All frocked flag or general officers in command of units or activities of the Navy or Marine Corps.

b. *Special courts-martial.* In addition to those officers otherwise authorized by Article 23(a)(1) through (6), UCMJ, the following officers are, under the authority granted to the Secretary of the Navy by Article 23(a)(7), UCMJ, empowered to convene special courts-martial:

(1) Commanding officers of all battalions and squadrons, including both regular and reserve Marine Corps commands.

(2) Any commander whose subordinates in the tactical or administrative chain of command have authority to convene special courts-martial.

(3) All commanders and commanding officers of units and activities of the Navy, except inactive duty training Naval Reserve units.

(4) All directors, Marine Corps Districts.

(5) All administrative officers, U.S. Naval Shipyards.

(6) All Inspector-Instructors, Marine Corps Reserve Organizations.

c. *Summary courts-martial.* Those officers who are empowered to convene general and special courts-martial may convene summary courts-martial.

d. *Requests for authority to convene general, special, and summary courts-martial.*

(1) If authority to convene general courts-martial is desired for an officer who is not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 22(a)(6), UCMJ.

(2) If authority to convene special or summary courts-martial is desired for commanding officers other than those listed in subsections (3) and (4) below, and such commanding officers are not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ, or Article 24(a)(4), UCMJ, as appropriate.

(3) If authority to convene special or summary courts-martial is desired for the commanding officer or officer in charge of any command designated as separate or detached under the provisions of U.S. Navy Regulations, the officer designating the organization as separate or detached shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ. The request shall state that the organization has been designated as separate or detached.

(4) If authority to convene special or summary courts-martial is desired for an officer designated as the commanding officer of staff enlisted personnel under the provisions of U.S. Navy Regulations, the designating commander shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to Article 23(a)(7), UCMJ.

(5) Requests for authority to convene summary courts-martial are processed by the Judge Advocate General with other requests for authority to convene special courts-martial. A single letter of authorization, signed by the Secretary, will empower all addressees to convene special courts-martial. Upon receipt of the Secretary's letter, therefore, a superior commander who originally requested only summary court-martial authorization for his subordinate commander shall, pursuant to section 0107(a), issue a letter to that subordinate commander restricting the authority granted to the convening of summary courts-martial. Copies of such letters of restriction shall be forwarded to the Judge Advocate General.

(6) Copies of all Secretarial letters of authorization are maintained in the Military Justice Division, Office of the Judge Advocate General.

0104 PREPARATION OF CONVENING ORDERS

a. *Form.* Convening and amending orders should be in the form set forth in appendix 4, MCM.

b. *Contents.* The text of the order is indicated by the forms in appendix 4, MCM, and notes therein. Each convening order shall be assigned a Court-Martial Convening Order Number. The order shall be personally subscribed by the convening authority and shall show his name, grade, and title, including organization or unit. A copy of the convening order shall be furnished to each person named in such order. A copy of any amending order shall be furnished to each person named in the convening order to which such amending order pertains.

0105 CHANGES IN MEMBERSHIP AFTER COURT HAS BEEN ASSEMBLED

Article 29(a), UCMJ, provides that no member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

0106 CONVENING SPECIAL COURTS-MARTIAL

a. *Bad conduct discharge cases.* As used herein, a bad conduct discharge case is one in which a bad conduct discharge is authorized, i.e., in which either because of the offenses charged or the accused's previous convictions, the maximum punishment authorized includes a bad conduct discharge, *and* in which the convening authority has not included in his endorsement on the charge sheet a direction that the authorized maximum punishment shall not include a bad conduct discharge. In bad conduct discharge cases, the convening authority shall detail to the court a military judge, a defense counsel having the qualifications prescribed under Article 27(b), UCMJ, and a reporter, provided that a military judge need not be so detailed in any case in which a military judge cannot be detailed because of physical conditions or military exigencies. In such cases, detailed written explanation by the convening authority is required to be prepared prior to trial. See paragraph 15b, MCM.

b. *Non-bad conduct discharge cases.* In cases in which neither the offenses charged nor the accused's previous record authorize the imposition of a bad conduct discharge, or in which the convening authority has directed that a bad conduct discharge shall not be an authorized punishment, the convening authority may, but is not required to, detail a military judge, certified defense counsel, and a court reporter to the court. However, in every case the accused must be afforded the opportunity to be represented at trial by counsel having the qualifications prescribed under Article 27(b), UCMJ, unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. In such cases, detailed written explanation by the convening authority is required to be prepared prior to assembly of the court. See paragraph 6c, MCM.

0107 RESTRICTIONS ON EXERCISE OF COURT-MARTIAL JURISDICTION

a. *Special and summary courts-martial.* In accordance with the provisions of paragraph 5b(4) and 5c, MCM, exercise of authority to convene summary and special courts-martial may be restricted by a competent superior commander.

b. *Right to refuse summary court-martial.* All persons in the Navy and Marine Corps have the absolute right to refuse trial by summary court-martial.

c. *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, as a matter of policy while the unit is embarked therein, refrain from exercising any power he might possess to convene and order trial by special or summary court-martial, referring all such matters to the commanding officer of the ship for disposition. The foregoing policy does not apply to Military Sealift Command vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only. When an organized unit is embarked for transportation only in a ship of the Navy, the officer in command of such organized unit shall retain the authority possessed over such unit prior to embarkation, including disciplinary authority. Under ordinary circumstances, the internal control and discipline of a unit embarked for transportation only shall be left to the commanding officer of that unit. Nothing in the foregoing shall be construed as impairing the paramount authority of the commanding officer of the ship, including disciplinary authority, over all personnel of the naval service embarked. In the case of units embarked for transportation only, however, the commanding officer of the ship should take disciplinary action under the Uniform Code of Military Justice over members of such embarked units only in unusual cases concerning incidents occurring on board his ship.

d. *Jurisdiction under Article 2(4), (5), (6) and Article 3, UCMJ*

(1) *Policy.* In all cases in which jurisdiction is dependent upon the provisions of Article 2(4), (5), (6), and Article 3, UCMJ, the following policies apply:

(a) No case of a retired member of the regular component of the Navy or Marine Corps not on active duty but entitled to receive pay, a retired member of the Naval Reserve or Marine Corps Reserve not on active duty who is receiving hospitalization from an armed force, or a member of the Fleet Reserve or Fleet Marine Corps Reserve not on active duty will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense.

(b) No case in which jurisdiction is based on Article 3, UCMJ will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy.

(c) If authorization is withheld under subsection (a) or (b), the Judge Advocate General shall indicate alternative action or actions, if any, to the convening authority.

(2) *Request for authorization.* Requests for authorization should contain the following information: the nature of the offense or offenses charged; a summary of the evidence in the case; the facts showing amenability of accused to trial by court-martial; whether civil jurisdiction exists; the military status of the accused or suspected person at the present and at the time of the alleged offense; and the reasons which make trial by court-martial advisable. Requests shall be addressed to the Secretary of the Navy and shall be forwarded by air mail or other expeditious means. If considered necessary, authorization may be requested directly by message or telephone.

(3) *Apprehension and restraint.* Specific authorization of the Secretary of the Navy is required prior to apprehension, arrest, or confinement of any person who is amenable to trial by court-martial solely by reasons of the provisions of Article 2(4), (5) or (6) or Article 3, UCMJ.

(4) *Tolling statute of limitations.* The foregoing rules shall not impede the preferring and processing of sworn charges under Article 30, UCMJ when such preferring and processing are necessary to prevent the barring of trial by the statute of limitations. See Article 43, UCMJ and paragraphs 29, 31, 33b and 68c, MCM.

(5) *Recall to active duty.* Members described in subsection (1)(a) above may not be recalled to active duty solely for trial by court-martial.

e. *Cases which have been adjudicated in domestic or foreign criminal courts.*

(1) *Policy.* A person in the naval service who has been tried in a domestic or foreign court, whether convicted or acquitted, or whose case has been "diverted" out of the regular criminal process for a probationary period, or whose case has been adjudicated by juvenile court authorities, shall not be tried by court-martial or be awarded nonjudicial punishment for the same act or acts, except in those unusual cases where trial by court-martial or the imposition of nonjudicial punishment is considered essential in the interests of justice, discipline, and proper administration within the naval service. Such unusual cases shall not be referred to trial or be the subject of nonjudicial punishment proceedings without specific permission as provided below.

(2) *Criteria.* Referral for trial or the imposition of nonjudicial punishment within the terms of this policy shall be limited to cases involving substantial discredit to the naval service and which meet one of the following criteria:

(a) Cases in which punishment by civil authorities consists solely of probation, and local practice does not provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical.

(b) Cases in which civil authorities have, in effect, divested themselves of responsibility by an acquittal manifestly against the evidence, or by the imposition of an exceptionally light sentence on the theory that the individual will be returned to the naval service and thus removed as a problem to the local community.

(c) Cases of homosexuality in which mild penalties have been imposed upon conviction. Homosexuality is a more serious problem in the military society because of the close-contact living and working conditions of its members.

(d) Other cases in which the interests of justice and discipline are considered to require further action under the UCMJ (*e.g.*, where conduct leading to trial before a foreign court has reflected adversely upon the naval service itself or when a particular and unique military interest was not or could not be adequately vindicated in the civilian tribunal).

(3) *Procedure.*

(a) *General and special courts-martial.* No case described in subsection (2) above shall be referred for trial by general court-martial or special court-martial without the prior permission of the Judge Advocate General. Requests for such permission shall be forwarded by the general court-martial authority concerned (or by the special court-martial authority concerned via the general court-martial authority) to the Judge Advocate General via the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate.

(b) *Summary courts-martial and nonjudicial punishment proceedings.* No case described in subsection (2) above shall be referred for trial by summary court-martial or be the subject of nonjudicial punishment proceedings, without the prior permission of the officer exercising general court-martial jurisdiction over the command. Grants of such permission shall be reported by the general court-martial authority concerned by means of a letter addressed to the Judge Advocate General in which he shall describe the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy.

(c) *Reporting requirements.* The provisions of this section do not affect the reporting requirements or other actions required under other regulations in cases of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.

(4) *Limitations.* Personnel who have been tried by courts which derive their authority from the United States, such as U.S. District Courts, shall not be tried by court-martial for the same act or acts. See paragraph 68d, MCM.

f. *Cases involving classified information.*

See OPNAVINST 5510.1 series for procedures relating to trial cases involving classified information. See also subsection g(3) below for matters dealing with national security.

g. *Major Federal offenses.*

(1) *Background.* The Federal civil authorities have concurrent jurisdiction with military authorities over offenses committed by military personnel which violate both the Federal criminal law and the UCMJ. The Attorney General and the Secretary of Defense have agreed on guidelines for determining which authorities shall have jurisdiction to investigate and prosecute major crimes in particular cases. See Appendix A-1-d(1). The administration of this program, on behalf of the naval service, has been assigned to the Naval Investigative Service. Guidelines are set forth in SECNAVINST 5520.3.

(2) *Limitation on court-martial jurisdiction.* In order to ensure that actions under the UCMJ do not preclude appropriate action by civilian Federal authorities in cases likely to be prosecuted in U.S. District Courts, convening authorities shall ensure that appropriate consultation under the Memorandum of Understanding between the Departments of Defense and Justice (see Appendix A-1-d(1)) has taken place prior to issuance of a grant of immunity, approval of a pretrial agreement, or trial by court-martial. Accordingly, commanding officers receiving information indicating that naval personnel have committed a major Federal offense (including any major criminal offense, as defined in SECNAVINST 5520.3, committed on a naval installation) shall refrain from taking action with a view to trial by court-martial, but shall refer the matter to the commanding officer of the cognizant Naval Investigative Service Office, or his nearest representative, for a determination in accordance with SECNAVINST 5520.3. In the event that the investigation of any such case is referred to a Federal civilian investigative agency, any resulting prosecution normally will be conducted by the cognizant U.S. attorney, subject to the exceptions set forth below.

(3) *Cases involving national security.* Consultation with the Department of Justice is required upon the initiation of any investigation involving a violation of a Federal statute relating to the national security. In order to ensure that such consultation is accomplished, every incident which appears to involve espionage, subversion, aiding the enemy, sabotage, spying, or the knowing and willful compromise of classified information must be referred immediately to the Naval Investigative Service in

accordance with SECNAVINST 5520.3. The Naval Investigative Service will notify the Judge Advocate General of the initiation of such an investigation for purposes of consultation with the Department of Justice.

(4) *Exceptions.*

(a) Where it appears that naval personnel have committed several offenses, including both major Federal offenses and serious but purely military offenses, naval authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practicable, and to retain the accused for prosecution. Any such action shall be reported immediately to the Secretary of the Navy (Judge Advocate General) and to the cognizant officer exercising general court-martial jurisdiction.

(b) When, following referral of a case to a civilian Federal investigative agency for investigation, the cognizant United States attorney declines prosecution, the investigation normally will be resumed by the Naval Investigative Service, and the command may then commence court-martial proceedings as soon as the circumstances warrant.

(c) If, while investigation by a Federal civilian investigative agency is pending, existing conditions require immediate prosecution by naval authorities, the officer exercising general court-martial jurisdiction will contact the cognizant U.S. attorney to seek approval for trial by court-martial. If agreement cannot be reached at the local level, the matter shall be referred to the Judge Advocate General for disposition.

(5) *Related matters.* See SECNAVINST 5520.3 for procedures in cases involving civilian employees. See chapter XIII concerning the interviewing of naval personnel by Federal investigative agencies and the delivery of personnel to Federal authorities. See section 0112 regarding grants of immunity in cases involving civilian witnesses or national security.

0108 SUPERIOR COMPETENT AUTHORITY DEFINED

a. *Accuser in a Navy chain of command.* Whenever a commanding officer comes within the purview of Articles 22(b) and 23(b), UCMJ, the "superior competent authority" as used in those articles is, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such accuser, the area coordinator, or the subordinate commander authorized to convene general or special courts-martial, as appropriate, and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the charges. When the cognizant area coordinator or designated subordinate commander is not superior in rank or command to the accuser, or when the accuser is an area coordinator or designated subordinate commander, or if it is otherwise impossible or impracticable to forward the charges as specified above, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction (see paragraph 33i, MCM).

b. *Accuser in the chain of command of the Commandant of the Marine Corps.* Whenever a commanding officer comes within the purview of Articles 22(b) and 23(b), UCMJ, the "superior competent authority" as used in those articles is defined as any superior officer in the chain of command authorized to convene a special or general court-martial, as appropriate. If such an officer is not reasonably available, or if it is otherwise impossible or impracticable to so forward the charges, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction. See paragraph 33i, MCM.

PART C–TRIAL MATTERS

0109 TRIAL GUIDES

a. *General.* A locally prepared or otherwise appropriate trial guide may be used in any court-martial. The trial guide is for assistance only and does not have the mandatory force or effect of regulations.

b. *Special courts-martial with a military judge.* A special court-martial with a military judge, to the extent possible, should follow the same procedures as a general court-martial, including any Article 39(a) session that may be held.

0110 REPORTERS AND INTERPRETERS

a. *Appointment.*

(1) *Reporters.* In each case before a general court-martial or before a military commission, the convening authority shall detail a qualified court reporter or reporters. The detail of qualified court reporters in cases of special courts-martial shall be in accordance with section 0106a and b. If no reporter is detailed and sworn, the special court-martial may not adjudge a bad conduct discharge. (See paragraphs 15b and 33j, MCM, as to when bad conduct discharges may be adjudged by special courts-martial.) Detailed reporters shall record in shorthand or by mechanical or other means the proceedings of, and the testimony taken before, the court or commission. A reporter may be detailed by the convening authority of a summary court-martial, by the officer who orders an investigation under Article 32, UCMJ, or by the officer who directs the taking of a deposition. As directed by the trial counsel of a general or special court-martial or by the summary court, the reporter shall prepare either a verbatim or a summarized record and shall preserve the complete shorthand notes or mechanical record of the proceedings as provided in section 0120. Additional clerical assistants may be detailed when necessary.

(2) *Interpreters.* In each case before a court-martial or military commission, in each investigation conducted under Article 32, UCMJ, and in each instance of the taking of a deposition, the convening authority or the officer directing such proceeding shall appoint, when necessary, an interpreter for the court, commission, investigation, or officer taking the deposition.

(3) *Manner of appointment.* Appointment of reporters and interpreters by the convening authority or authority directing the proceedings may be effected personally by him or, at his discretion, by any other person. Such appointment may be oral or in writing.

b. *Source and expenses.* Whenever possible, reporters, interpreters, and clerical assistants shall be detailed from either naval or civilian personnel serving under the convening authority or officer directing the proceeding, or placed at his disposal by another officer or by other Federal agencies. When necessary, the convening authority or officer directing the proceeding may employ or authorize the employment of a reporter or interpreter, at the prevailing wage scale, for duty with a general or special court-martial, military commission, an investigation under Article 32, UCMJ, or at the taking of a deposition. No expense to the Government shall be incurred by the employment of a reporter, interpreter, or other person to assist in a court-martial, military commission, Article 32 investigation, or the taking of a deposition, except when authorized by the convening authority or officer directing the proceeding. When required reporters or interpreters are not available locally, the convening authority or officer directing the proceeding shall communicate with the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, requesting that such assistance be provided or authorized.

0110A INDIVIDUAL MILITARY COUNSEL: ARTICLE 32 INVESTIGATIONS, GENERAL AND SPECIAL COURTS-MARTIAL

a. *General.* Article 38(b)(3)(B), UCMJ, provides that an accused has the right to be represented before a general or special court-martial or at an investigation under Article 32, UCMJ [hereinafter proceeding], by "military counsel of his own selection if that counsel is reasonably available." Article 38(b)(7) provides that "[t]he Secretary concerned shall, by regulation, define 'reasonably available' for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available." Pursuant to the provisions of Article 38(b)(3) and (7), and in accordance with the provisions of paragraph 48*b* of the *Manual for Courts Martial, 1969 (Rev.)*, the term "reasonably available" is hereafter defined and the procedures for determining whether a military counsel selected by an accused is "reasonably available" are established. Inasmuch as an accused has the right to civilian counsel in addition to detailed counsel or individual military counsel, retention of or representation by civilian counsel does not extinguish the right to representation by individual military counsel. Finally, it is the policy of the Secretary of the Navy that the right to individual military counsel shall be administered so as not to interfere with the orderly and efficient processing of the accused's case.

b. *Definition of "reasonably available."*

(1) An Army, Air Force, or Coast Guard military counsel is "reasonably available" to represent a Navy or Marine Corps accused before a proceeding if that counsel is located within 100 miles of where the proceeding is to be held and not otherwise unavailable within the meaning of paragraph 48*b*, *Manual for Courts-Martial, 1969 (Rev.)*, or regulations of the Secretary concerned for the Department in which that counsel is on duty.

(2) A Navy or Marine Corps military counsel is "reasonably available" to represent an accused before a proceeding if, at the time scheduled for the proceeding, the requested counsel:

(a) Will be on the active-duty list of the Navy or Marine Corps; and

(b) Will be certified in accordance with Article 27(b), UCMJ; and

(c) Will not be one of the following:

(i) a flag or general officer; or

(ii) performing duties as trial or appellate military judge; performing court-martial duties exclusively as a trial counsel; performing duties as appellate defense or government counsel; performing duties as fleet, force, or staff judge advocate, or principal legal advisor to a command, organization or agency, or the principal assistant to such judge advocate or legal advisor; performing duties as a military magistrate; assigned as commanding officer, executive officer, or officer in charge; performing duties as an instructor or student at a college, university, service school or academy; or

(iii) assigned to any of the following commands, activities, organizations, or agencies: Office of the Counsel to the President; Office of the Secretary of Defense; Office of the Secretary of the Navy; Office of the Joint Chiefs of Staff; Office of the Chief of Naval Operations; Headquarters, Marine Corps; National Security Agency; Defense Intelligence Agency; Office of the Judge Advocate General; Office of Legislative Affairs; Office of the Naval Inspector General; Naval Military Personnel Command; or any other agency or department outside of the Department of Defense; and

(d) Will be assigned, if requested by a member of the Army, Air Force, or Coast Guard, to a command or activity located within 100 miles of where the proceeding is to be held (distance determined in accordance with the Official Table of Distances) and not otherwise unavailable within the meaning of these Regulations; or will be assigned, if requested by a member of the Navy or Marine Corps, to a command or activity located within the Navy-Marine Corps Trial Judiciary Circuit within which the proceeding is to be held, or within 100 miles of where the proceeding is to be held (distance determined in accordance with the Official Table of Distances); and

(e) Will be reasonably available, such availability having been determined by the commander of the requested counsel, defined as the commanding officer or head of the organization, activity, or agency with which the requested military counsel will be serving at the time of the proceeding. *See* subsection c(3) below.

(3) Notwithstanding the above, if a requested military counsel meets the requirements of subsections (2)(a) and (2)(b) above and an attorney-client relationship regarding a charge in question existed prior to the request, the requested military counsel should ordinarily be made available to act as individual military counsel. As used herein, an attorney-client relationship exists when counsel and accused have had a conversation which is privileged and counsel had engaged actively in the preparation and pretrial strategy of the case. Specifically excluded are relationships which arose solely because the counsel represented the accused on post-trial review, including review under Article 70.

(4) The Secretary of the Navy may impose geographic limitations in addition to those provided for in subsection b(2)(d) when required by exigent circumstances or military necessity.

c. *Procedure.*

(1) *Request by accused.* An accused may request a determination of the availability of only one individual military counsel at a time. Such request for an individual military counsel shall be in writing, indicating the duties and location of the requested counsel, if known. It shall clearly state whether there is an existing attorney-client relationship between the accused and the requested military counsel regarding a charge in question. It shall indicate whether the requested military counsel possesses unique or special qualifications relevant to the case and specify those qualifications. Such request will be made by the accused or the detailed defense counsel promptly and be submitted through the trial counsel, if any, to the convening authority.

(2) *Action on request by convening authority.*

(a) *When requested military counsel will not be assigned to the convening authority at the time of the proceeding.* If the requested military counsel is a member of the Air Force, Army, or Coast Guard and unavailable within the meaning of paragraph 48*b*, *Manual for Courts-Martial, 1969 (Rev.)*, or a member of the Navy or Marine Corps and unavailable within the meaning of subsections b(2)(a)-(d), and there is no claim of an existing attorney-client relationship regarding a charge in question, the convening authority shall promptly deny the request and so inform the accused, in writing, citing the dispositive subsection(s). In all other cases, the convening authority shall promptly forward the request to the commander of the requested counsel. The convening authority shall provide that authority with the following information: the nature and complexity of the charges and legal issues involved in the case; the estimated duration of the necessary absence (travel, preparation, and participation in the proceeding); the experience level and any special or unique qualifications of detailed defense counsel; and any other information or comments deemed appropriate.

(b) *When requested military counsel will be assigned to the convening authority at time of the proceeding.* If the requested military counsel is unavailable within the meaning of subsections b(2)(a)-(d), and there is no claim of an existing attorney-client relationship regarding a charge in question, the convening authority shall promptly so inform the accused, in writing, citing the dispositive subsection(s). Otherwise, the convening authority shall make the determination of whether the requested military counsel will be reasonably available to act as individual military counsel in accordance with the procedures contained in subsection c (3) below.

(3) *Action on request by commander of requested military counsel.* The commander shall promptly determine whether such counsel will be "reasonably available." In making that determination, the commander will assess the impact upon his/her command should the requested counsel be made available. In so doing, the commander may consider, among others, the following factors: the anticipated duties and workload of the requested military counsel including authorized leave; the estimated duration of the necessary absence (travel, preparation, and participation in the proceeding), considering any unique or special qualifications relevant to the proceeding possessed by the requested military counsel; the ability of other counsel to assume the duties of the requested military counsel; the nature and complexity of the charges or legal issues involved in the proceeding; the experience level and any special or unique qualifications of detailed defense counsel; and the information or comments of the convening authority. The commander shall promptly inform the convening authority and accused of such determination. If a determination of unavailability is made, the reasons therefor shall be set forth in writing and provided to the convening authority and the accused. The decision whether a requested military counsel will be available to act as an individual military counsel is an administrative determination within the sole discretion of the commander of the requested counsel.

(4) *Administrative review of denial of request.* If a requested military counsel is determined to be unavailable, the accused may appeal that decision to the immediate superior in command of the authority who made such determination, via that authority, but appeals may not be made which require action at the departmental or higher level. The basis for such appeal will normally be an abuse of discretion. If, however, the accused claims that the person who made that determination did not have the authority to do so, or did so on the basis of inaccurate or incomplete information, the reviewing authority shall consider those allegations and, if warranted, direct corrective action. The appeal shall be promptly reviewed and the commander of the requested military counsel, convening authority, and accused shall be promptly informed of the decision.

(5) *Approval of associate defense counsel.* If individual military counsel has been made available to defend an accused at a proceeding, the detailed defense counsel normally shall be excused from further participation in the case unless the convening authority, in his/her sole discretion, approves a request from the accused that detailed defense counsel act as associate defense counsel. The seriousness of the alleged offenses, the retention of civilian defense counsel, the complexity of legal or factual issues, and the detailing of additional trial counsel are among the factors which may be considered by the convening authority in the exercise of this discretion. This decision is not subject to administrative review.

0111 OATHS

a. *Military judges.* A military judge, certified in accordance with Article 26(b), UCMJ, may take a one-time oath to perform his duties faithfully and impartially in all cases to which he is detailed. This oath may be taken at any time and may be administered by any officer authorized by Article 136, UCMJ and section 2502 to administer oaths. Once such an oath is taken, the military judge need not be resworn at any court-martial to which he is subsequently detailed.

Military judges will customarily be given a one-time oath. In the event that a military judge detailed to a particular court-martial has not been previously sworn, the trial counsel shall administer the oath to the military judge at the appropriate point in the proceedings. The following oath shall be used for the swearing in of military judges:

> I____________________________
> do swear (or affirm) that I will faithfully and impartially perform, according to my conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon me as military judge. So help me God.

b. *Counsel.* Any military counsel, certified in accordance with Article 27(b), UCMJ, may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any officer authorized by Article 136, UCMJ, and section 2502 to administer oaths. Once such an oath is taken, counsel need not be resworn at any trial to which he is detailed trial counsel, assistant trial counsel, defense counsel or assistant defense counsel, or in any case in which he is serving as individual counsel at the request of the accused.

Individual counsel, military (not certified) or civilian, requested by the accused must be sworn in each case. Detailed trial and defense counsel who are not certified in accordance with Article 27(b), UCMJ must be sworn in each case. Counsel who have taken one-time oaths administered by forces of the armed services other than the naval services need not again be sworn in courts-martial convened in the naval service.

The following oath may be used in administering a one-time oath to counsel:

> I________________________________
> do swear (or affirm) that I will faithfully perform the duties of counsel in any court-martial to which I am detailed as counsel or in which I participate as individual defense counsel. So help me God.

c. *Court members.* Court members may be given one oath for all cases which are referred to the court in accordance with the convening order which detailed them as members. In the event the convening order is amended, a new member may be sworn when he arrives. This oath may be administered by any officer authorized by Article 136, UCMJ, and section 2502 to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court members will be those prescribed in paragraph 114b, MCM. See also appendix 8b, MCM.

d. *Reporters.* Any court reporter, military or civilian, may be given a one-time oath. The oath normally will be administered by trial counsel in the first court-martial to which the court reporter is assigned. Once such oath is taken, the court reporter need not be resworn at any trial to which he is assigned. Each command to which court reporters are permanently attached shall maintain a record of the one-time oaths administered to reporters attached to that command. In addition, a notation of the fact that a military court reporter has taken a one-time oath should be placed in the service record of such court reporter for future reference with instructions that such notation be retained in the service record upon re-enlistment. When the court reporter is not sworn at trial, the fact that he has been previously sworn will be recorded in the transcript or record of trial.

The following oath may be used in administering a one-time oath to court reporters:

> I________________________________
> do swear (or affirm) that I will faithfully perform the duties of reporter in any court-martial to which I am assigned as reporter. So help me God.

e. *Interpreters.* Interpreters will be sworn by the trial counsel as provided in paragraph 114e, MCM.

0112 AUTHORITY TO GRANT IMMUNITY FROM PROSECUTION

a. *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

b. *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, *i.e.*, any officer exercising general court-martial jurisdiction [*see* paragraph 68h, MCM, 1969 (rev.)]. Such recommendation will be forwarded by the trial counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other factfinding body, or the investigator when no charges have been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice. If approved, a copy of the written grant of immunity must be served upon the accused or his defense counsel within a reasonable time before the witness testifies. Additionally, if any witness is expected to testify in response to a promise of leniency, the terms of the promise of leniency must be reduced to writing and served upon the accused or his defense counsel in the same manner as a grant of immunity.

c. *Civilian witnesses.* Pursuant to 18 U.S.C. §§ 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, then the approval of the Attorney General of the United States or his designee must be obtained prior to the execution or issuance of an order to testify to the witness. The cognizant officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in §0112e.

d. *Cases involving national security.* In all cases involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of rules or statutes concerning classified information or the foreign relations of the United States, a proposed grant of immunity shall be forwarded to the General Counsel of the Department of Defense for the purpose of consultation with the Department of Justice. See § 0107g and Appendix A-1-d(1)-(3) regarding relations between the Departments of Defense and Justice. The cognizant officer exercising general court-martial jurisdiction may obtain approval by the Attorney General of a proposed grant of immunity by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in §0112e.

e. *Content of immunity requests.* In all cases in which approval of the Attorney General of the United States is required prior to the issuance of a grant of immunity, whether under § 0112c or d, the cognizant officer exercising general court-martial jurisdiction shall forward by message or letter the proposed order to testify and grant of immunity to the Judge Advocate General (Code 20). The order to testify should be substantially in the form set forth in Appendix A-1-d(4). Requests for assistance shall be in writing, should allow at least three weeks for consideration, and must contain the following information:

(1) Name, citation, or other identifying information, of the proceeding in which the order is to be used.

(2) Name of the witness for whom the immunity is requested.

(3) Name of the employer or company with which a witness is associated or the military unit or organization to which a witness is assigned.

(4) Date and place of birth, if known, of the witness.

(5) FBI or local police file number, if any, and if known.

(6) Whether any State or Federal charges are pending against the witness and the nature of the charges.

(7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.

(8) A brief resume of the background of the investigation or proceeding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(a) What testimony the witness is expected to give;

(b) How this testimony will serve the public interest;

(c) Whether the witness (i) has invoked the privilege against self incrimination; or (ii) is likely to invoke the privilege;

(d) If (c)(ii) is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

f. *Post-testimony procedure.* After a witness immunized in accordance with § 0112c or d has

testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530:

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.

A copy of this correspondence together with a verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony or other information given by a civilian witness pursuant to such an order to testify (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

g. *Review.* The officer granting immunity to a witness is thereafter precluded from taking reviewing action on the record of the trial before which the witness granted immunity testified. However, a successor in command not participating in the grant of immunity is not so precluded.

h. *Form of grant.* In any case in which a military witness is granted transactional immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in Appendix A-1-d(5). In any case in which a military witness is granted testimonial immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in Appendix A-1-d(6).

0113 ARTICLE 39(a) SESSIONS

a. *Procedure.* Article 39(a) sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. Article 39(a) sessions prior to assembly are encouraged, and every effort should be made to resolve at that time those issues which would otherwise be considered out of the hearing of the members of the court.

At an Article 39(a) session held prior to assembly, the military judge may inquire into the accused's desire to be tried by a military judge alone. If the accused does so desire, the court may be immediately assembled with all further proceedings taking place subsequent to assembly. The military judge should determine at the initial Article 39(a) session whether counsel have been sworn. If not, the appropriate oath should be administered at this time. See section 0111a.

If the accused does not request to be tried by military judge alone, the Article 39(a) session may proceed.

The military judge of a general or special court-martial may, at an Article 39(a) session hold the arraignment, hear arguments and rule upon motions, and receive the pleas of the accused. (See paragraph 53d, MCM.) If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of his plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately and without further formalities. If the accused has pleaded guilty to some but not all of the charges and specifications, the military judge may enter findings of guilty on those charges and specifications to which the accused has pleaded guilty. When a finding of guilty has been so entered, the military judge need only inform the court members after assembly that the accused has been arraigned, a plea of guilty has been entered and accepted, and he has been found guilty.

At an Article 39(a) session either counsel may make challenges for cause or peremptory challenges if he so desires. If questioning of a particular court member is desired, the military judge may, in his discretion, request the court member to appear at the Article 39(a) session. The use of this procedure does not preclude voir dire of the court after assembly, further challenges at that time, or subsequent challenges as provided by paragraph 62d, MCM.

If all matters have not been considered at the initial Article 39(a) session, other Article 39(a) sessions may be held prior to or after assembly of the members. An Article 39(a) session is not authorized to be held by the president of a special court-martial without a military judge.

b. *Entry of findings without a vote.* In special courts-martial without a military judge and in courts-martial with a military judge in which the plea has not been accepted at a previous Article 39(a) session, the president of the court or the military judge, as appropriate, may enter a finding of guilty without vote immediately upon the acceptance of a plea of guilty.

0114 PRETRIAL AGREEMENTS IN GENERAL AND SPECIAL COURTS-MARTIAL

a. *Legality of pretrial agreements.* Under the provisions of the UCMJ, it is legal and proper for the convening authority to make a pretrial agreement as to charges and specifications upon which the accused will be tried and/or the maximum sentence which will be finally approved by the convening authority if the accused pleads guilty and his plea of guilty is accepted by the military judge and is not permited to be withdrawn. Experience has shown that opportunities for advanced planning, savings in money and manpower, and a more expeditious administration of justice can be effected by such agreements.

b. *Major Federal offenses.* The authority of court-martial convening authorities to refer cases to trial and approve pretrial agreements extends only to trials by courts-martial. In order to ensure that such actions do not preclude appropriate action by federal civilian authorities in cases likely to be prosecuted in the U.S. district courts, court-martial convening authorities shall ensure that appropriate consultation under the Memorandum of Understanding between the Departments of Defense and Justice (Appendix A-1-d(1) - (3)) has taken place prior to trial by court-martial or approval of a pretrial agreement, in cases where such consultation is required.

c. *Action by convening authorities.* Convening authorities and their staff judge advocates will take necessary action to insure that the rights of accused persons are fully protected in cases where there is a pretrial agreement. To that end, the following procedures shall apply:

(1) *General courts-martial.*

(a) The offer to plead guilty must originate with the accused and his counsel and should be submitted to the assigned trial counsel who will conduct all arrangements as to the offer and make recommendations with respect thereto to the convening authority through the staff judge advocate. Whether or not the convening authority enters into such a pretrial agreement is a matter within his sound discretion. The agreement, if made, must be in writing and must be personally signed by the convening authority and the accused and witnessed on behalf of the accused by his counsel. A suggested form of such an agreement is set forth in Appendix A-1-e, but this form must be modified as appropriate to include all of the agreement made between the accused and the convening authority. No matters "understood" between the parties should be omitted from the written agreement. The sentence which will ultimately be approved by the convening authority (under various sentences which may be adjudged by the court, if desired) shall be set forth clearly and should, under all of the circumstances of the particular case, be appropriate for the offense or offenses.

(b) The offer of the accused to plead guilty will not be accepted if the Government has reason to believe that the evidence which it will be able to produce at the trial will be insufficient to convict. Unreasonable multiplication of charges which might tend to persuade the accused to enter into a pretrial agreement shall be avoided, nor shall an accused be induced to plead guilty to a lesser included offense by the preferring of more serious charges—as, for example, by preferring a charge of desertion where the evidence indicates that unauthorized absence is the appropriate charge.

(c) Except for the military judge, under no circumstance will the court be officially informed of any negotiation between counsel and the convening authority on the subject of a pretrial agreement, of any such agreement existing at the time of trial, or of any such agreement made and later rejected by the accused to permit a plea of not guilty. Precaution shall also be taken to prevent the court, insofar as possible, from obtaining unofficial knowledge of the foregoing. A pretrial agreement will not preclude the accused from presenting matter in mitigation and extenuation; and counsel for the accused has a continuing duty, despite such an agreement, to vigorously represent the accused before the court with respect to the sentence to be adjudged. The military judge is permitted to examine in toto the pretrial agreement and to inquire into the accused's understanding of such agreement, whether hearing the case alone or with members.

(d) In all cases where there is a pretrial agreement followed by a guilty plea of the accused, the agreement (in a form substantially similar to that set forth in Appendix A-1-e) shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the review of the staff judge advocate prescribed by paragraph 85, MCM.

(2) *Special courts-martial.*

(a) The procedures set forth above relating to pretrial agreements in general courts-martial are applicable to special courts-martial except as provided in subsections (b) and (c) below.

(b) The provisions of subsection (1) (a) above relating to submission of the proposed agreement through the staff judge advocate are not applicable in those cases in which the convening authority has no staff judge advocate. A suggested form of the agreement is set forth in Appendix A-1-f.

(c) In those cases wherein the agreement contemplates a punitive discharge, if counsel for the accused is not a lawyer within the meaning of Article 27(b), UCMJ, additional counsel so qualified shall be made available to the accused, unless specifically waived by the accused. Such additional counsel will advise the accused relative to the pretrial agreement and will also witness the signature of the accused thereon. In all cases where there is a pretrial agreement followed by a guilty plea, the agreement (in a form substantially similar to that set forth in Appendix A-1-f), shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the convening authority's action on the record of trial.

0115 RELEASE OF INFORMATION PERTAINING TO ACCUSED PERSONS; SPECTATORS AT JUDICIAL SESSIONS

a. *Release of information pertaining to accused persons.*

(1) *General.* There are valid reasons for making available to the public information about the administration of military justice. The task of striking a fair balance between the protection of individuals accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the military service and of the workings of military justice, depends largely on the exercise of sound judgement by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused's trial, or which could reasonably have such an effect.

(2) *Applicability of regulations.* These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, the imposition of nonjudicial punishment, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the imposition of nonjudicial punishment, completion of trial (court-martial sessions), or disposition of the case without trial. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other persons or agencies for unofficial purposes.

(3) *Release of information.*

(a) As a general matter, release of information pertaining to accused persons should not be initiated by persons in the naval service. Information of this nature should be released only upon specific request therefor, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

(b) Except in unusual circumstances, information which is subject to release under this regulation should be released by the cognizant public affairs officer; and requests for information received by others from representatives of news media should be referred to such officer for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses.

(4) *Information subject to release.* On inquiry the following information concerning a person accused or suspected of an offense or offenses may generally be released except as provided in subsection (6) below:

(a) The accused's name, grade, age, unit, regular assigned duties, duty station, and sex.

(b) The substance of the offenses of which the individual is accused or suspected.

(c) The identity of the victim of any alleged or suspected offense, except the victim of a sexual offense.

(d) The identity of the apprehending and investigating agency, and the identity of counsel of the accused, if any.

(e) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, pursuit, and use of weapons.

(f) The type and place of custody, if any.

(g) Information which has become a part of the record of proceedings of the court-martial in open session.

(h) The scheduling of any stage in the judicial process.

(i) The denial by the accused of any offense or offenses of which he may be accused or suspected (when release of such information is approved by the counsel of the accused).

(5) *Prohibited information.* The following information concerning a person accused or suspected of an offense or offenses generally may not be released except as provided in subsection (6) below:

(a) Subjective opinions, observations or comments concerning the accused's character, demeanor at any time (except as authorized in subsection

(4)(e), above) or guilt of the offense or offenses involved.

(b) The prior criminal record (including other apprehensions, charges or trials) or the character or reputation of the accused.

(c) The existence or contents of any confession, admission, statement or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(d) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.

(e) The identity, testimony, or credibility of possible witnesses, except as authorized in subsection (4)(c), above.

(f) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(g) References to confidential sources or investigative techniques or procedures.

(h) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under subsection (5) above or the nonrelease of information permitted under subsection (4) above. Attention should be given to the SECNAV instructions implementing the Freedom of Information Act (5720.42 series) and the Privacy Act (5211.5 series). Consultation with the command judge advocate, or if none is assigned, the cognizant naval legal service office, concerning interpretation and application of these instructions is encouraged.

b. *Spectators.*

(1) *At sessions of courts-martial.* The sessions of courts-martial shall be public and, in general, all persons, except those who may be required to give evidence, shall be admitted as spectators. Whenever necessary to prevent the dissemination of classified information to other than authorized persons, the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, as appropriate, may direct that the spectators involved be excluded from a trial or a portion thereof. In all other situations, spectators or classes of spectators may be excluded only when the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, in the exercise of the discretion reposed in him, determines such action to be legally necessary or proper.

(2) *At pretrial hearings.* In any preliminary hearing, including a hearing conducted pursuant to Article 32, UCMJ, or a court of inquiry or investigation conducted pursuant to this Manual, the presiding officer, upon motion of the Government or the defense or upon his own motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators shall be based on the ground that dissemination of evidence, information, or argument presented at the hearing may disclose matters that will be inadmissible in evidence at a subsequent trial by court-martial and is therefore likely to interfere with the right of the accused to a fair trial by an impartial tribunal.

0116 PREPARATION AND FORWARDING OF CHARGES

a. *Preparation generally.* See chapter VI, MCM, for preparation of charges. Available data as to service, witnesses and similar items required to complete the first page of the charge sheet will be included. Ordinarily, the charge sheet will be forwarded in triplicate, and all copies will be signed. If several accused are charged on one charge sheet with the commission of a joint offense, the complete personal data as to each accused will be set forth on page 1 of the charge sheet or upon an attached copy of that page. One additional signed copy of the charge sheet will be prepared for each accused in excess of one.

b. *Enlisted pay grades.* The pay grade of an accused, e.g., E-1, E-2, etc., shall be indicated following the grade or rate of the accused on page 1 of the charge sheet.

c. *Pay and allotment data.*

(1) *Longevity increases.* Under applicable provisions of the Department of Defense Military Pay and Entitlements Manual, certain periods, such as unauthorized absence, do not constitute "time served" for the purpose of determining the cumulative years of service creditable for longevity pay increases. Care shall be taken in recording the basic pay of the accused on page 1 of the charge sheet to ensure that the entry accurately reflects only the longevity increase to which the accused is entitled.

(2) *Contribution to basic allowance for quarters.* The provision of law which required enlisted member in pay grade E-4 (4 years' or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired 30 June 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective 30 June 1973. Therefore, the $40.00 previously subtracted when computing the net amount of pay subject to forfeiture or detention for an enlisted person in pay grade E-4 (4 years' or less service) or below, shall no longer be deducted. Accordingly, that section on page 1 of the charge sheet, DD form 458, titled: "Contribution to family or quarters allowance [MCM, 126h(2)]" should be marked "not applicable."

d. *Forwarding of charges by an officer in a Navy chain of command.*

(1) *General court-martial cases.* When a commanding officer, in taking action on charges, deems trial by general court-martial to be appropriate, but he is not authorized to convene such court or finds the convening of such court impracticable, the charges and necessary allied papers will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such commanding officer, be forwarded to the area coordinator or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the charges. See section 0108 for additional provisions in cases in which the forwarding officer is an accuser.

(2) *Special and summary court-martial cases.* When an officer in command or in charge, in taking action on charges, deems trial by special or summary court-martial to be appropriate, but he is not authorized to convene such courts-martial, the charges and necessary allied papers will be forwarded to the superior in the chain of command authorized to convene the type of court-martial deemed appropriate unless an officer authorized to convene general courts-martial and superior in the chain of command to such officer in command or charge, on the basis of a local arrangement with the area coordinator or the designated subordinate commander, has directed that such cases be forwarded to the area coordinator or to the subordinate commander authorized to convene the type of court-martial deemed appropriate and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designed subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of the forwarding of the charges. See section 0108 for additional provisions in cases in which the forwarding officer is an accuser. Subject to the terms of the local arrangement, forwarding to the area coordinator or designated subordinate commander may also be resorted to even though the immediate or superior commanding officer of the accused is authorized to convene the type of court-martial deemed appropriate but finds such action impracticable.

e. *Forwarding of charges by an officer in the chain of command of the Commandant of the Marine Corps.* When an officer in command or in charge, in taking action on charges, deems trial by general, special, or summary court-martial to be appropriate, but he is not empowered to convene a court as deemed appropriate for the trial of the case, the officer will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such officer, forward the charges and necessary allied papers through the chain of command to an officer exercising the kind of court-martial jurisdiction deemed appropriate. See paragraphs 32f and 33i, MCM. See also section 0108 for additional provisions in cases in which the forwarding officer is an accuser.

0117 PERSONAL DATA AND CHARACTER OF PRIOR SERVICE OF THE ACCUSED.

In accordance with the authority contained in paragraphs 75b(2) and 79, MCM, the trial counsel or summary court-martial officer may, prior to sentencing, obtain and introduce from the personnel records of the accused evidence of the marital status, of the number of dependents, if any, and of the character of prior service of the accused. Such evidence includes copies of reports reflecting the past military efficiency, conduct, performance, and history of the accused and evidence of any disciplinary actions to include punishments under Article 15. Personnel records of the accused include all those records made or maintained in accordance with Departmental regulations that reflect the past military efficiency, conduct, performance, and history of the accused. Records of nonjudicial punishment must relate to offenses committed prior to trial and during the current enlistment or period of service of the accused, provided such records of nonjudicial punishment shall not extend to offenses committed more than two years prior to the commission of any offense of which the accused stands convicted. In computing the two year period, periods of unauthorized absence as shown by the personnel records of the accused should be excluded. *See* paragraph 75b(2), *MCM,* for applicable procedural regulations.

0118 COURT-MARTIAL PUNISHMENT OF REDUCTION IN GRADE

a. *Automatic reduction.* Automatic reduction to the lowest enlisted pay grade under Uniform Code of Military Justice, art. 58a(a), and *MCM, 1969, (Rev.),* par. 126e, shall be effected in the naval service but only in accordance with this section, which is the regulation prescribed by the Secretary of the Navy pursuant to Article 58a(a), Uniform Code of Military Justice.

(1) Reduction to the lowest enlisted pay grade will be automatically effected only in a case in which the sentence, as approved by the convening authority, includes, whether or not suspended, either:

(a) A punitive discharge, or

(b) Confinement in excess of 90 days (if the sentence is awarded in days) or 3 months (if the sentence is awarded in other than days).

(2) In his sole discretion, the convening authority or supervisory authority may retain the accused in the pay grade held at the time of sentence or an intermediate pay grade and suspend the automatic reduction to pay grade E-1 which would otherwise be effected under Article 58a, Uniform Code of Military Justice, and this section, utilizing the forms in Appendix 14d, *Manual for Courts-Martial, 1969 (Rev.),* as guides. The automatic reduction may be suspended without regard to whether any part of the approved sentence was suspended. If, however, the adjudged sentence includes a reduction in pay grade, the reduction in pay grade should be suspended for the same period as the automatic reduction is suspended. Additionally, the convening authority may direct that the accused serve in pay grade E-1 while in confinement but be returned to the pay grade held at the time of sentence or an intermediate pay grade upon release from confinement. Failure of the convening authority to address automatic reduction will result in the automatic reduction to pay grade E-1 on the date of the convening authority's action.

(3) The following forms may be used as guides for (a) suspending automatic reduction without suspending any of the approved sentence (except reduction if included in the sentence) or (b) reducing the accused to E-1 while in confinement and returning the accused to the pay grade held at the time of sentence or an intermediate pay grade upon release from confinement.

(a) In the foregoing case of ____________, the sentence is approved [and will be duly executed] but [the execution of so much thereof as provides for reduction to pay grade ___________ and] automatic reduction to pay grade E-1 is suspended until ______________, at which time, unless the suspension is sooner vacated, the suspended portions will be remitted without further action. The accused will [continue to] serve in pay grade __________ unless the suspension of the [reduction to pay grade ______ and] automatic reduction is vacated, in which event the accused at that time will be reduced to the pay grade of E-1.

(b) In the foregoing case of ____________, the sentence is approved [and will be duly executed]. The accused will serve in pay grade E-1 from this date until released from confinement at which time he/she will be returned to pay grade _________.

b. *Form of sentence to reduction in grade.* In adjudging a sentence which includes reduction to the lowest enlisted pay grade or to an intermediate pay grade, that portion of the sentence which relates to reduction should refer exclusively to the numerical designation of the grade to which reduced. Accordingly, this portion of the sentence should read: "To be reduced to the grade of pay grade E-____." The proper grade or rate title, occupational field, or

apprenticeship or striker designation of the reduced pay grade shall be administratively determined by the convening authority, subject to the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate.

0119 FORFEITURES, DETENTIONS, FINES

a. *Deduction of contribution to basic allowance for quarters no longer required.* The provision of law which required an enlisted member in pay grade E-4 (4 years' or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired 30 June 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective 30 June 1973. Therefore, the $40.00 previously subtracted when computing the net amount of pay subject to forfeiture or detention for an enlisted person in pay grades E-4 (4 years' or less service) or below, shall no longer be deducted. With regard to a service member with dependents, however, the effect of any forfeiture or detention of pay on his ability to discharge his responsibility for the care of his dependents is a factor in considering the amount of forfeiture or detention.

b. *Forfeitures imposed by a summary court-martial.* Forfeiture of pay adjudged by summary courts-martial under Article 20, UCMJ, may be apportioned over more than one month, but, as a matter of policy, the period of apportionment should not exceed three months.

c. *Limitations.* In cases in which the sentence involves forfeiture of pay, detention of pay, or fine, the limitations prescribed by paragraph 126h, MCM, shall be observed, as well as the procedures prescribed in the Department of Defense Military Pay and Allowances Entitlements Manual.

0120 PREPARATION OF RECORDS OF TRIAL

a. *Verbatim records of trial.* Records of trial shall be prepared verbatim in certain general and special courts-martial as provided in paragraphs 82b and 83a and appendix 9a, MCM. When a verbatim record of trial is maintained, the trial counsel shall, unless unavoidably impractical, retain or cause to be retained any notes (stenographic or otherwise) or any recordings (mechanical or voice) from which the record of trial was prepared until such time as the convening authority (in general courts-martial) or the officer exercising general court-martial jurisdiction (in special courts-martial) takes action on the case.

b. *Summarized records of trial.* Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 82b and appendix 10a, MCM, in general courts-martial where:

(1) The court has adjudged a sentence not including discharge; and

(2) The sentence is not in excess of that which can otherwise be adjudged by a special court-martial; and

(3) The case does not affect a general or flag officer.

If a guilty plea is entered, the providency inquiry conducted by the military judge must be summarized. The basic facts elicited must be included in this summary and must be set forth with sufficient specificity to show both that the accused is admitting acts or omissions which correspond to the specifications in the charge sheet and that the facts admitted constitute violations of the articles charged.

Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 83b and appendix 10a, MCM, in special courts-martial where the court has adjudged a sentence not including a bad conduct discharge. If a guilty plea is entered, the providency inquiry conducted by the military judge or president of a special court-martial without a military judge must be summarized. The basic facts elicited must be included in this summary and must be set forth with sufficient specificity to show both that the accused is admitting acts or omissions which correspond to the specifications in the charge sheet and that the facts admitted constitute violations of the articles charged.

When summarized records of trial are prepared, the notes or recordings (stenographic, mechanical, voice, or otherwise) from which the record of trial was prepared shall be retained until completion of appellate review.

Additionally, if there is a pretrial agreement, the military judge's inquiry into the understanding of all parties regarding the agreement, as required by *U.S. v. Green,* 24 U.S.C.M.A. 299, 52 C.M.R. 10, 1 M.J. 453 (1976), must be included in the summarization.

c. *Records of trial establishing lawful jurisdiction only.* In all courts-martial that have resulted in an acquittal of all charges and specifications, or that have been terminated prior to findings with prejudice to the Government, the record of trial need contain only sufficient information to establish lawful jurisdiction over the accused and the offenses. When the proceedings were terminated prior to findings with prejudice to the Government, a summary of the reasons for such termination shall be included in the record of trial. When a summarized record of trial is prepared in accordance with this section because the accused has been acquitted of all charges or the proceedings have been terminated prior to findings with prejudice to the Government, the notes of recordings (stenographic, mechanical, voice, or otherwise) from which the record of trial was prepared shall be retained until the completion of supervisory review in special courts-martial, and the convening authority's review in general courts-martial.

d. *Summary courts-martial.* The record of trial in all summary courts-martial shall contain the original, a duplicate original, or a certified true copy of the convening order. In summary courts-martial cases in which a not guilty plea is entered to any charge and specification and in which a finding of guilty results, the evidence considered by the summary court-martial relative to guilt or innocence must be summarized and attached to the record. If a guilty plea is entered, paragraphs 70b and 79d(2), MCM 1969 (Rev.) will be complied with. Matters considered by a summary court-martial in extenuation and mitigation must, in all cases, be summarized and attached to the record. Strict compliance with the provisions of paragraph 79e, MCM, is directed. After the convening authority has taken action on the record, he will cause a complete copy of the record of trial to be served on the accused.

e. *Preparation, arrangement, and authentication; general and special courts-martial.* In the preparation of both verbatim and summarized records of trial, the preparation, arrangement, and authentication of records of trial and allied papers, to the extent possible shall be in accordance with appendices 9 and 10, MCM, and the following rules:

(1) *Charge sheets.* The original of the charge sheet may be inserted into the original record and copies of the charge sheet may be inserted into copies of the record in lieu of copying into the record the charges and specifications upon which the accused is to be tried, the name and description of the accuser, the affidavit, and the reference for trial. However, when the charges and specifications, the name and description of the accuser, his affidavit and the reference for trial have been copied verbatim into the record, as recommended in the guide on page A8-13,

MCM (appendix 8b), the original of the charge sheet is to be prefixed to the original of the record.

(2) *Staff judge advocate's review.* In addition to the requirements of paragraph 85d, MCM, copies of the staff judge advocate's legal review shall be attached to all copies of records of trial forwarded for review by the Navy-Marine Corps Court of Military Review. Additionally, all copies of records of trial which contain a review required by articles 61 or 65(b), UCMJ, shall contain proof of service of that review upon counsel for the accused together with any comment or challenge which counsel may make and such response or correction as may be appropriate.

(3) *Court-Martial Data Sheet.* Unless otherwise directed by the cognizant officer exercising general court-martial jurisdiction, the use of the Court-Martial Data Sheet (DD Form 494) is not required.

(4) *Request for appellate defense counsel and power of attorney.* When the statement of the accused concerning appellate representation before the Navy-Marine Corps Court of Military Review is required (see section 0121), the original shall be affixed to the original record and a copy thereof to each copy of the record. If an accused executes a power of attorney authorizing his appellate defense counsel of record to accept service of the Navy-Marine Corps Court of Military Review decision in his case (see section 0121), the original shall be affixed to the original appellate rights statement in the original record of trial and copies affixed to the copy of the appellate rights statement in each copy of the record.

(5) *Court-Martial Data Form.* Convening and supervisory authorities during the review of all trials by general court-martial and all trials by special court-martial involving bad conduct discharges shall prepare NAVJAG Form 5813/1, Court-Martial Data (Rev. 11-72), attach it under the cover sheet of the original record of trial, and forward it with the record of trial to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General. RCS JAG 5813-4. A form containing sample entries is set forth in Appendix section A-1-g.

(6) *Authentication.* Non-verbatim records of trial by special courts-martial shall be authenticated in the same manner as verbatim records.

(7) *Arrangement of original record with allied papers.* The record of trial should be bound within protective covers and arranged in the sequence shown on the back cover sheet of DD Form 490 or DD Form 491, as applicable.

f. *Security classification of records of trial.*

Records of trial containing classified matter shall be properly classified in accordance with the provisions of paragraph 82d, MCM, and the Department of the Navy Security Manual for Classified Information. Copies of such records for delivery to the accused shall be prepared and handled in accordance with paragraph 82g, MCM. Attention is directed to the fact that, while the Security Manual requires that matter bear the over-all classification of its highest component, that degree of classification is not then imparted to other components. Rather it authorizes and requires that a component be marked with the classification it warrants (if any). Misunderstanding of these provisions may result in erroneously marking as classified each page of a voluminous record, rendering review for downgrading unnecessarily difficult and excision for delivery to the accused or counsel impossible.

PART D—POST-TRIAL MATTERS

0121 POST-TRIAL REPRESENTATION OF A CONVICTED ACCUSED

a. A convicted accused is entitled to post-trial representation by a defense counsel qualified in accordance with Article 27(b), UCMJ, until completion of appellate review in his case. Article 70(c)(1), UCMJ, provides that appellate defense counsel shall represent the accused, when requested by him, before the Navy-Marine Corps Court of Military Review or the U.S. Court of Military Appeals. Paragraph 48k(3), MCM, requires the trial defense counsel, immediately after a trial which results in a conviction, to advise the accused in detail as to his appellate rights. Included in this explanation shall be advice with regard to the accused's right to post-trial representation, to request clemency pursuant to paragraph 77a, MCM, and to request deferment of any sentence to confinement pursuant to Article 57(d), UCMJ. Trial defense counsel shall inform the accused of the responsibilities and powers of the convening authority, and, as applicable, the supervisory authority, the Office of the Judge Advocate General pursuant to Article 69, UCMJ, the Navy-Marine Corps Court of Military Review, and the U.S. Court of Military Appeals. In order that each record of trial in courts-martial involving a punitive discharge or confinement at hard labor for one year or more shows compliance with paragraph 48k(3), MCM, especially with regard to advice concerning appellate representation, the following procedures shall be observed:

(1) The accused in a court-martial involving a punitive discharge or confinement at hard labor for one year or more shall, after being advised of his appellate rights, be requested to indicate his desires with regard to appellate representation by a statement in a form similar to that set forth in Appendix A-1-h.

(2) The original signed statement will be attached to the original record of trial in accordance with section 0120e(4).

(3) A duplicate original shall be provided to the accused and duplicate originals or certified copies shall be attached to each copy of the record of trial. The accused should also be advised of his authority to designate an attorney-in-fact as his agent to accept service of the Navy-Marine Corps Court of Military Review decision in his case and to petition the U.S. Court of Military Appeals for review on his behalf. Trial defense counsel should advise the accused of the advantages of granting an attorney-in-fact this authority and encourage the accused to execute one of the powers of attorney in the form set forth in Appendix A-1-j.

b. In accordance with the requirements of *United States v. Palenius*, 25 USCMA 222, 54 CMR 549, 2 M.J. 86 (CMA 1977), the trial defense counsel should request to be relieved of such duties by the authority before whom the case is then pending upon review, *i.e.*, the convening authority, the supervisory authority, the Judge Advocate General, the Navy-Marine Corps Court of Military Review, or the U.S. Court of Military Appeals. Relief from duties as trial defense counsel will ordinarily be predicated upon the assertion by the trial defense counsel that he or she will be unable to continue representation of the accused, or that appellate representation has been provided or waived. The authority effecting such relief shall ensure the uninterrupted representation of the accused. Relief will be accomplished by means of an order issued by the cognizant authority. The original correspondence and orders relating to the relief of counsel and the appointment of a successor counsel shall be placed in the original record of trial. Copies of all correspondence and orders relating to the relief of counsel and the appointment of successor counsel shall be placed in each copy of the record of trial and provided to the counsel concerned and the accused. There is no requirement for trial defense counsel or his successor in a special court-martial not involving a bad conduct discharge to request relief from defense counsel duties after supervisory review has been completed pursuant to Article 65(c), UCMJ.

0122 REVIEW BY STAFF JUDGE ADVOCATE

a. *Who may act.* Ordinarily the senior judge advocate attached to the command of an officer exercising general court-martial jurisdiction is the staff judge advocate of that command within the meaning of Articles 34, 61, and 65(a) and (b), UCMJ. If, however, more than one judge advocate is attached to such a command, and if it appears that the senior is or may become disqualified for any reason from acting as staff judge advocate in any particular case or for a specific period of time, a convening authority may, in addition to the action authorized by paragraph 85a, MCM, designate, in writing, a junior to act as his staff judge advocate in any particular case or for a specified period of time if that junior officer is otherwise qualified.

b. *Distribution of staff judge advocate's review.* In addition to the requirements of paragraph 85d, MCM, and section 0120e(2), a copy of the review of the staff judge advocate shall be forwarded to counsel for the accused at least five days prior to the action of the convening authority in order to afford counsel an opportunity to correct, challenge, or comment on the staff judge advocate's review and a copy of the staff judge advocate's review together with any comments thereon by counsel for the accused shall be forwarded to the command at which the accused is to be confined in order that it may be available to those charged with developing an institutional program for the individual. In addition to the foregoing, one copy of the review of the staff judge advocate together with any comments thereon by counsel for the accused shall be forwarded to the President, Naval Clemency and Parole Board, 801 North Randolph Street, Suite 905, Arlington, Virginia 22203, in those cases wherein the sentence includes confinement for eight months or more, or an unsuspended punitive discharge. The original and all copies must be legible.

0123 ACTION ON COURTS-MARTIAL BY CONVENING AUTHORITY

a. *Companion cases tried separately.* In court-martial cases where the separate trial of a companion case is ordered, the convening authority shall so indicate in his action on the record in each case.

b. *Suspension of sentences.* Convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence adjudged.

c. *Sentences including a punitive discharge.* In order that the best interests of the service as well as those of the accused may be served, the convening authority, in those cases where the sentence as approved by him extends to a punitive discharge, whether or not suspended, shall include in his initial action a brief synopsis of the accused's conduct record during the current enlistment or current enlistment as extended. This synopsis should include in chronological order: dates, nature of offenses committed, sentences adjudged and approved, and nonjudicial punishment imposed. The synopsis should also include medals and awards, commendations, and any other information of a commendable nature. Although not required, similar action may, if circumstances are deemed appropriate, be taken in other cases. The foregoing requirement does not in any way affect the legal requirements as to the admissibility of records of previous convictions during the trial itself. See also section 0123f.

d. *Sentences including censure.*

(1) *General.* Censures (reprimands and admonitions) issued in execution of court-martial sentences are required to be in writing. Except as otherwise prescribed in this section, the provisions of section 0102e(1), (2), and (3) shall be applicable to letters of censure issued in execution of a court-martial sentence.

(2) *By whom issued.* Letters of censure in execution of sentences of summary courts-martial shall be issued by the convening authority. In those special and general court-martial cases wherein a sentence imposing censure is ordered executed by the convening authority, he shall issue the letter as part of his action on the record in accordance with the provisions of paragraph 89c(9), MCM. Otherwise the letter shall be issued as part of the promulgating order of the officer who subsequently directs execution of the sentence.

(3) *Contents.* The letter shall include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It shall also contain the following paragraph:

> "A copy of this letter will be placed in your official record in [the Bureau of Naval Personnel] [Headquarters, U.S. Marine Corps]. You are therefore privileged to forward, within 15 days after receipt of this action, such statement concerning this letter as you may desire for inclusion in your record. If you elect not to submit a statement, you shall so state officially in writing within the time prescribed. In connection with your statement, you are advised that any statement submitted shall be couched

> in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement shall not contain countercharges."

(4) *Procedure for issuance.* The original letter shall be delivered to the accused and a copy appended to the convening authority's action (or the promulgating order of the officer subsequently directing execution of the sentence). The action (or order) should refer to the letter in the following tenor:

> "Pursuant to the sentence of the court, as herein approved, a letter of [reprimand] [admonition] is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action."

(5) *Forwarding copy to Department.* Upon receipt of the accused's written statement or his written declaration that he does not desire to make a statement, an additional copy, together with the statement or declaration, shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(6) *Appeals.* Review, including appellate review, of letters of censure issued as part of an approved court-martial sentence will be accomplished as provided for by the Uniform Code of Military Justice, the Manual for Courts-Martial, and this Manual with respect to the proceedings of the particular court-martial which imposed the sentence. No separate appeal from these letters will be considered.

e. *Designation of places of confinement.* The convening authority of a court-martial sentencing an accused to confinement is a competent authority to designate the place of temporary custody or confinement of naval prisoners. See section 0146.

f. *Cases involving convictions of larceny or other offenses involving moral turpitude.* If a punitive discharge has been approved, whether or not suspended, in a case involving conviction of larceny or other offense or offenses involving moral turpitude, the convening authority shall include in his action on the record facts which tend to extenuate, mitigate, or aggravate the offense or offenses and which do not appear in the court record or in the papers accompanying the same. In all cases in which the information to be so set forth in the action of the convening authority is not exclusively extenuating or mitigating, the convening authority shall refer a copy of the information to the accused before taking action on the case, and shall afford the accused an opportunity to rebut any part or portion of the information. A comment that such opportunity to rebut was afforded shall be included in the action of the convening authority, and any statement made by the accused in rebuttal shall be appended to such action. See paragraph 85b, MCM for limitations on consideration of adverse matter.

g. *Disagreement between convening authority and his staff judge advocate.* If the convening authority, in taking his action on a general court-martial, disagrees with the advice contained in the post-trial review, his options are set forth in paragraph 85c, MCM. Should the convening authority take an action different in any manner from that recommended by his staff judge advocate, he shall state the reasons for his action in a letter transmitting the record to the Judge Advocate General. A copy of this letter of transmittal shall be provided to the accused and his counsel.

0124 PROMULGATING ORDERS

a. *General and special courts-martial.*

(1) *When promulgating orders required.* Any action taken on the proceedings, findings, or sentence of a general or special court-martial by the convening authority or any other party empowered to take such action shall be promulgated as prescribed in paragraphs 90 and 91, MCM. Separate orders shall be issued for each accused in the case of a joint or common trial. See Note, appendix 15a, MCM, page A15-2.

(2) *When supplementary order is not required.* Where the findings and sentence set forth in the initial promulgating order are affirmed without modification upon subsequent review of the case, no supplementary promulgating order is required except as necessary to order the execution of the sentence or to designate a place of confinement.

(3) *Supplementary orders in U.S. Navy-Marine Corps Court of Military Review cases.* If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the approved findings and sentence have been affirmed without modification by the U.S. Navy-Marine Corps Court of Military Review and, in appropriate cases, the U.S. Court of Military Appeals, no supplementary court-martial order is necessary. A supplementary court-martial order shall be issued in all other cases. Such orders shall be published as follows:

(a) Supplementary orders in cases involving flag or general officers, death sentences, and dismissals are issued by the Judge Advocate General by direction of the Secretary of the Navy.

(b) Other supplementary orders shall be issued by the cognizant general court-martial authority. In cases not reviewed by the U.S. Court of Military Appeals (by petition or certification), orders should be issued immediately following the accused's execution of a "Request for Immediate Execution of Discharge" (see section 0135) or upon expiration of 60 days from the date of service of the U.S. Navy-Marine Corps Court of Military Review decision upon the accused. In cases considered by the U.S. Court of Military Appeals, supplementary orders should be issued upon notification of completion of review by the court.

(c) All supplementary orders in U.S. Navy-Marine Corps Court of Military Review cases shall bear the "MCM" number appearing on the U.S. Navy-Marine Corps Court of Military Review decision.

(4) *Form.* The form of a promulgating order is prescribed in appendix 15, MCM. In copying and including the action of the convening authority in the promulgating order, any synopsis of the accused's record and/or circumstances of the offense contained in the convening authority's action pursuant to section 0123c and/or section 0123f shall also be copied and included in the promulgating order. The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him. In either case the name, grade, and title of the subscribing officer, including his organization or unit, shall be given. Where a subordinate officer signs by direction, his name, title, and organization shall be followed by the words: "By direction of (name, grade, title, and organization of issuing officer)." A duplicate original of a promulgating order is a carbon copy as complete as the original in all respects, including the signature of the officer who signed the original, or an identical copy made by photographic or other duplicating process. A certified copy of a promulgating order is a copy bearing the statement "Certified to be a true copy" over the signature, grade, and title of an officer, or of an enlisted person in the Legalman rating (Navy), or in legal occupational fields (Marine Corps), of grade E-6 or above, who has been designated in writing by the officer issuing the promulgating order.

(5) *Distribution.* All initial and supplementary promulgating orders shall be distributed as follows (the original and all copies must be legible):

(a) Original to be attached to original record of trial.

(b) Duplicate original to be placed in the service record or service record book of the accused, unless the court-martial proceedings resulted in acquittal of all charges, disapproval of all findings of guilty, or disapproval of the sentence by the convening authority when no findings have been expressly approved by him. In those cases of Navy personnel, if applicable, forward to the Personnel Support Activity Detachment maintaining the accused's service record.

(c) Duplicate originals or certified copies:

Three to be attached to the original record of trial.

One to be attached to each copy of the record of trial.

Two to the commanding officer of the accused if a brig or correctional center is designated as the place of confinement; three if a disciplinary command is designated as the place of confinement. These copies should accompany the records of the accused to the place of confinement.

One to the Chief of Naval Personnel (NMPC-8) or the Commandant of the Marine Corps, as appropriate.

One to the President, Navy Clemency and Parole Board, 801 North Randolph Street, Suite 905, Arlington, Virginia 22203, if the sentence, as approved by the convening authority, includes an unsuspended punitive discharge, dismissal, or confinement for eight months or more.

(d) Duplicate originals, certified copies, or plain copies:

One to the accused.

One each to the military judge, trial counsel, and defense counsel of the court-martial before which the case was tried.

One to the convening authority and, if the accused was serving in a command other than that of the convening authority at the time of the alleged offense, one to the command in which he was then serving.

One to each appropriate subordinate unit and any other local distribution desired.

b. *Summary courts-martial.* In accordance with paragraph 90e, MCM, the results of a trial by summary court-martial need be promulgated only to the accused. The results of any review or action on a summary court-martial pursuant to section 0125a, subsequent to the initial action of the convening authority, shall be communicated to the convening authority and to the commanding officer of the accused for notation in the service record or service record book of the accused.

0125 REVIEW OF SUMMARY AND SPECIAL COURTS-MARTIAL

a. *Summary courts-martial and special courts-martial not involving a bad conduct discharge.*

(1) *Officers having supervisory powers.* In addition to the officer immediately exercising general court-martial jurisdiction over a command, the Judge Advocate General, the Deputy Judge Advocate General, any Assistant Judge Advocate General, all officers exercising general court-martial jurisdiction, and the deputies or chiefs of staff of officers exercising general court-martial jurisdiction are designated as having supervisory authority for the review of records of trial pursuant to Article 65(c), UCMJ, and paragraph 94a(2), MCM.

(2) *Selection of supervisory authorities.* It is the policy of the Department of the Navy that review of cases pursuant to paragraph 94a(2), MCM will be accomplished in the field, unless compelling reasons exist for forwarding the record or records to the Judge Advocate General for review.

(a) For commands in a Navy chain of command, review pursuant to paragraph 94a(2), MCM will be accomplished, if practicable, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, by the area coordinator or a subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the record.

(b) For commands in the chain of command of the Commandant of the Marine Corps, review pursuant to paragraph 94a(2), MCM will be accomplished within the chain of command if practicable. If such accomplishment of the review is found not practicable, any officer having supervisory authority in the field may be requested to accept records of such cases and to act thereon pursuant to paragraph 94a(2), MCM. Only if all reasonably available officers having supervisory authority in the field find it impracticable to grant such requests, will the records in such cases be forwarded to the Judge Advocate General for review. If so forwarded to the Judge Advocate General, each record shall be accompanied by a letter stating the reasons why supervisory authority action was not accomplished in the field.

(3) *Courts in which an officer exercising general court-martial jurisdiction takes the convening authority's action.* When an officer exercising general court-martial jurisdiction acts as the convening authority in the review of a summary court-martial or a special court-martial not involving a bad conduct discharge, whether or not he convened the court, he shall after his initial action on the record, cause a judge advocate to review the record pursuant to Article 65(c), UCMJ. Procedure for such review shall follow that as prescribed in section 0125a(5).

(4) *Identification of officer to whom record is forwarded for supervisory review.* In all cases, the action of the convening authority in forwarding the record for supervisory review shall identify the officer to whom the record is forwarded by stating his official title, such as "The record of trial is forwarded to the Commandant, First Naval District, for action under Article 65(c), Uniform Code of Military Justice."

(5) *Review procedures.*

(a) In accordance with the provisions of paragraph 94a(2), MCM, the officer having supervisory authority shall cause a judge advocate to review records of trial received for review under Article 65(c), UCMJ. Unless, following such review, corrective or mitigating action by the officer having supervisory authority is required or recommended, no supervisory action need be taken. In lieu thereof, a notation may be made on the record of trial by the judge advocate who reviewed the record, reciting the designation of the command in which the review was accomplished, the date, the result of the review, and the signature of the judge advocate. In such cases, notification of the review and the result thereof will be made to the convening authority, the accused military defense counsel of record, and the commanding officer of the accused for notation in the service record or service record book of the accused. In cases in which corrective or mitigative action is required or recommended, action will be placed on the record of trial over the signature of the supervisory authority and a supplemental promulgating order will be issued (see 0124a(2)).

(b) If the officer having supervisory authority disagrees with the recommendation of the judge advocate as to the effect of any error or irregularity respecting the proceedings, as to the adequacy of the evidence, or as to what sentence can legally be approved, he shall not place an action on the record but shall forward the record to the Judge Advocate General, together with a signed copy of the judge advocate's recommendation, by a letter of transmittal giving his reasons for disagreement with the judge advocate's recommendation. When the question of law has been resolved by the Judge Advocate General, he may either take action on the record as the officer having supervisory authority, or he may return the record together with a final determination as to the law of the case, to the cognizant officer having supervisory authority for his action on the record.

(c) Any action on the record by the officer having supervisory authority shall affirmatively indicate that the record was reviewed by a judge advocate by including the statement "This record has been reviewed in accordance with Article 65(c), UCMJ."

b. *Special courts-martial involving a bad conduct discharge.*

(1) *Action by convening authority who is an officer exercising general court-martial jurisdiction.* When an officer exercising general court-martial juris-

diction is the convening authority of a special court-martial which involves a bad conduct discharge, and if such discharge is approved by him, the record shall be forwarded directly to the Navy-Marine Corps Appellate Review Activity for review by the U.S. Navy-Marine Corps Court of Military Review. In taking his action on the record, such a convening authority shall follow the procedures set forth in paragraph 85, MCM, and section 0123. In addition to forwarding the record of trial in accordance with paragraph 94a(3), MCM, such a convening authority will forward a copy of his action on the record to counsel for the accused.

(2) *Action by reviewing authority (officer exercising general court-martial jurisdiction).* In special court-martial cases where the sentence as approved by the convening authority who is not an officer exercising general court-martial jurisdiction includes a bad conduct discharge, review will be accomplished in accordance with paragraph 94a(3), MCM, and thereafter the reviewing authority, in addition to forwarding the record of trial in accordance with paragraph 94a(3), MCM, will forward a copy of his action on the record, or, where review under Article 65(b), UCMJ, cannot be accomplished in the field, as described hereinafter, a copy of the letter explaining why review under Article 65(b), UCMJ, was not accomplished, to the military defense counsel of record.

(a) For activities in a Navy chain of command, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, review will be accomplished by the area coordinator or a subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose. For mobile units, the area coordinator or designated subordinate commander for this purpose is the area coordinator or designated subordinate commander most accessible to the mobile unit at the time of forwarding of the record. As indicated above, a superior officer authorized to convene general courts-martial in the chain of command may direct otherwise; he may, for example, direct that records be forwarded to him for review.

(b) For activities in the chain of command of the Commandant of the Marine Corps, review will be accomplished by the officer ordinarily exercising general court-martial jurisdiction over the command.

In the event review by any of the foregoing is impracticable (e.g., because of the absence or lack of a staff judge advocate) any other officer authorized to convene general courts-martial may be requested to accept records of trial for review. Only if all reasonably available officers exercising general court-martial jurisdiction find it impracticable to grant such request will the records be forwarded directly to the Navy-Marine Corps Appellate Review Activity for review by the U.S. Navy-Marine Corps Court of Military Review. If so forwarded, they shall be accompanied by a letter stating the reasons why review under Article 65(b), UCMJ was not accomplished in the field.

(3) *Disagreement between reviewing authority and his staff judge advocate.* If the reviewing authority is in disagreement with any recommendation of his staff judge advocate concerning the appropriate action to take in the case, he shall take such action on the record as is within his discretionary powers notwithstanding the disagreement and shall transmit the record of trial, with an expression of his own views as to the matters of disagreement, to the Navy-Marine Corps Appellate Review Activity for review by the U.S. Navy-Marine Corps Court of Military Review. A copy of the letter of transmittal expressing the convening authority's views shall be provided to the accused and his counsel.

(4) *Disapproval of bad conduct discharge by reviewing authority.* If a reviewing authority determines that he will not approve that portion of the sentence which provides for a bad conduct discharge, he shall, prior to placing his action upon the record, cause the record to be reviewed by a judge advocate in accordance with Article 65(c), UCMJ, and in the manner set forth in section 0125a(3).

c. *Special courts-martial tried in joinder or in common.* When one or more of the sentences adjudged in cases tried in joinder or in common require review only under paragraph 94a(2), MCM (not involving an approved bad conduct discharge), and the remaining sentence or sentences require review under paragraph 94a(3), MCM (including an approved bad conduct discharge), the officer exercising general court-martial jurisdiction shall cause each of the sentences to be reviewed in accordance with the applicable paragraph of the MCM. In his action on the sentence or sentences requiring review under paragraph 94a(3), MCM, he shall state that the sentence or sentences requiring review only under paragraph 94a(2), MCM, have been reviewed in accordance with Article 65(c), UCMJ. The original of the action or review taken on the sentence or sentences requiring review only under paragraph 94a(2), MCM, shall be filed with the copy or copies of the record in the files of the officer exercising general court-martial jurisdiction, and a copy of such action or review shall be attached to the record forwarded to the Judge Advocate General, together with the action taken on the sentence or sentences requiring review under paragraph 94a(3), MCM.

0126 ACTION ON SPECIAL COURTS-MARTIAL BY GENERAL COURTS-MARTIAL CONVENING AUTHORITIES

a. *Suspension of sentences.* Officers exercising general court-martial jurisdiction are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence which was adjudged and approved by the convening authority.

b. *Designation of places of confinement.* The general court-martial convening authority who orders a sentence of confinement into execution subsequent to the initial action of the convening authority on the record shall designate the place of confinement in his action on the record. See also section 0146.

0127 SUPERVISION OVER COURT-MARTIAL RECORDS AND THEIR DISPOSITION AFTER REVIEW IN THE FIELD

a. *JAG supervision.* Records of all trials by courts-martial in the naval service are under the supervision of the Judge Advocate General of the Navy.

b. *Navy-Marine Corps Court of Military Review cases.* After completion of review in the field, all records requiring review by the Navy-Marine Corps Court of Military Review shall be forwarded to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

c. *Other general court-martial cases.* General court-martial cases which do not require review by the Navy-Marine Corps Court of Military Review under Article 66(b), UCMJ, shall be forwarded to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

d. *Summary courts-martial and special courts-martial not involving a bad conduct discharge.* The records of trial of such cases shall be filed as provided in section 0136.

0128 CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS, AND COURT-MARTIAL REPORT

Officers exercising general court-martial authority shall submit quarterly to the Judge Advocate General NAVJAG Form 5800/9 Criminal Activity, Disciplinary Infractions, and Court-Martial Report (Rev. 11-77). Such reports shall be submitted 25 January, 25 April, 25 July, and 25 October. RCS JAG 5800-4A. NAVJAG Form 5800/9A Supplemental Report to the Criminal Activity, Disciplinary Infractions, and Court-Martial Report (Rev. 11-77) is to assist officers exercising general court-martial authority in the collection of data from subordinate commands. RCS JAG 5800-4B. These forms containing sample entries are set forth in Appendix A-1-i.

0129 REMISSION AND SUSPENSION

a. *Authority to remit or suspend sentences.*

(1) *General.* Pursuant to the provisions of Article 74(a), UCMJ and paragraph 97a, MCM, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the Judge Advocate General, and all officers exercising general court-martial jurisdiction over the command to which the accused is attached are designated as empowered to remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President. However the Judge Advocate General shall not exercise this power in cases involving flag or general officers, and officers exercising general court-martial jurisdiction shall not exercise this power in cases involving officers or warrant officers. A sentence to death may not be suspended. Any action authorized by this subsection may be taken without regard to whether the person acting has previously approved the sentence.

(2) *Authority of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas.* Authority of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, to take action pursuant to Article 74(a), UCMJ, other than remission or suspension of any part or amount of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge, is limited to the following:

(a) Effecting actions directed by the Secretary following clemency review.

(b) Remission of uncollected forfeitures in the cases of court-martial prisoners who are to be returned to duty.

(c) Remission of confinement, not in excess of five days, for the purpose of facilitating administration by adjusting dates of transfer upon completion of confinement. Early releases in excess of five days may be granted when specifically authorized by the Chief of Naval Personnel for Navy prisoners and the Commandant of the Marine Corps for Marine Corps prisoners.

(d) In the event of an emergency, where, in the opinion of the commanding officer, the requirement to remit additional confinement or a punitive discharge is of such immediate nature as to preclude the normal or urgent processes of clemency as provided by SECNAVINST 5815.3 series, the commanding officer may take such action following report of the circumstances to, and having received concurrence in such action of, the Secretary of the Navy (Naval Clemency and Parole Board).

(e) Such other authority as may be specifically delegated in writing by the Secretary.

(3) *Inferior courts-martial.* Paragraph 97a, MCM grants power to remit or suspend any part or amount of the unexecuted portion of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge to the officer having supervisory authority (section 0125a) and the commanding officer of the accused who has immediate authority to convene a court of the kind that adjudged the sentence.

b. *Probationary period.* All suspensions shall be of the conditional remission type and shall be for a definite period of time. The running of the period of suspension of a sentence is interrupted either by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the sentence. The running of the period of suspension of a sentence resumes: (1) as of the date the probationer's unauthorized and unexcused absence ends; or (2) as of the date of the interruption, due to initiation of vacation proceedings, if proceedings to vacate suspension of the sentence are concluded without vacation of the suspension. For instructions concerning voluntary extension of enlistment for the purpose of serving probation, see SECNAVINST 5815.3 series.

c. *Liaison with Naval Clemency and Parole Board.* Officers who take clemency action pursuant to the authority of section 0129a on any sentence which includes a punitive discharge or confinement for eight months or more shall coordinate such action with the Naval Clemency and Parole Board in accordance with the provisions of SECNAVINST 5815.3 series.

READEX FICHE

0130 EFFECTIVE DATE OF CONFINEMENT AND FORFEITURES WHEN PREVIOUS SENTENCE NOT COMPLETED

a. *Confinement.* When a prisoner serving a sentence to confinement adjudged by court-martial is convicted by a court-martial for another offense and sentenced to a term of confinement, the subsequent sentence, upon being ordered into execution, will begin to run as of the date adjudged and will interrupt the running of the prior sentence. After the subsequent sentence has been fully executed, the prisoner will resume the service of any unremitted interrupted sentence to confinement.

b. *Forfeitures.* If forfeitures are being collected pursuant to a sentence adjudged by a previous court-martial at the time the convening authority takes action approving a sentence to forfeitures adjudged by a subsequent court-martial, he may, in his discretion, provide in his action that the application of forfeitures adjudged by the latter court-martial will be deferred until the date upon which the sentence to forfeitures adjudged by the previous court-martial has been fully executed.

0131 VACATION OF SUSPENSION

a. *Vacation of suspended general court-martial sentence or of a suspended special court-martial sentence including a bad conduct discharge.* Before the vacation of the suspension of any general court-martial sentence, or of a special court-martial sentence which, as approved, includes a bad conduct discharge, the officer having special court-martial jurisdiction over the probationer shall follow the procedures outlined at paragraph 97b, MCM, except that the officer exercising special court-martial jurisdiction over the probationer shall personally conduct the hearing on the alleged violation of probation. If the officer exercising general court-martial jurisdiction decides to vacate all or a portion of the suspended sentence, he must record the evidence upon which he relied and the reasons for vacating the suspension in his action. The counsel referred to in paragraph 97b, *MCM, 1969 (Rev.)* need not be the same counsel who originally represented the probationer. The probationer at a vacation hearing has no right to individual military counsel (IMC) of his own selection.

b. *Vacation of suspended special court-martial sentence not including a bad conduct discharge or of a suspended summary court-martial sentence.* Before the vacation of the suspension of a special court-martial sentence which, as approved, does not include a bad conduct discharge or of a summary court-martial sentence, the officer having authority to convene, for the command in which the probationer is serving or assigned, a court of the kind that imposed the sentence shall personally hold a hearing on the alleged violations of probation. The hearing shall be conducted in accordance with paragraph 97b, MCM, and the probationer shall be accorded the right to detailed counsel upon request, or civilian counsel at no expense to the Government, if he was entitled to such counsel at the court-martial which imposed the sentence. This counsel need not be the same counsel who originally represented the petitioner and the petitioner has no right to individual military counsel (IMC) of his own selection. If the officer with the authority to take such action decides to vacate all or a portion of the suspended sentence, he must record the evidence upon which he relied and the reasons for vacating the suspension in his action.

c. *Confinement of probationer prior to vacation of the suspended sentence.* When it is considered desirable to confine a probationer prior to vacation of a suspended sentence which includes confinement and/or a punitive discharge, a preliminary hearing must be held by an independent officer to determine whether there is probable cause or reasonable ground to believe that the service member has committed acts in violation of the conditions of the suspension. No determination of the need for confinement to ensure the presence of the probationer until vacation is accomplished or a decision not to vacate is reached by the cognizant authority is required or authorized. Officers serving as military magistrates should, where possible, be utilized to conduct these preliminary hearings.

d. *Form of order.* The forms prescribed in Appendix A-15-e, MCM, shall be used for promulgating orders vacating suspensions of sentences. In cases where Article 71(c), UCMJ, is applicable and appellate review is not complete, the final sentence of the appropriate form may be modified to read: "Upon completion of appellate review pursuant to Article 71(c), UCMJ, the sentence as affirmed may be executed without further order."

e. *Distribution of order.* The promulgating order shall be distributed in accordance with the applicable provisions of section 0124.

0132 APPROVAL OF SENTENCES EXTENDING TO DISMISSAL OF AN OFFICER

Pursuant to the authority of Article 71(b), UCMJ, the Under Secretary of the Navy and the Assistant

Secretaries of the Navy are designated as empowered to approve sentences extending to the dismissal of an officer (other than a general or flag officer), or such part, amount, or commuted form of such sentences as they see fit, and to suspend the execution of any part of the sentence as approved.

0133 SERVICE OF DECISION OF NAVY-MARINE CORPS COURT OF MILITARY REVIEW ON ACCUSED

a. *Promulgation packages.* When, in accordance with the provisions of paragraph 100c, MCM, the Judge Advocate General elects not to certify a case to the U.S. Court of Military Appeals, a "promulgation package" will be prepared by his office and forwarded to the officer immediately exercising general court-martial jurisdiction over the command to which the accused is attached. The package shall include copies of the Navy-Marine Corps Court of Military Review decision, a copy of the initial and supplementary court-martial orders, an endorsement (on the accused's copy of the decision) notifying him of his right to petition for review, a form of petition for review, and a postcard receipt to be signed by the accused. The package normally will also include directions to take action in accordance with the provisions of this section; however, detailed instructions may be included. Additionally, the package will normally contain sufficient copies of the Navy-Marine Corps Court of Military Review decision to provide, as a matter of courtesy, a copy to the military judge, trial counsel, and the appointed trial defense counsel. As an additional matter of courtesy, the officer exercising general court-martial authority may duplicate extra copies of the Navy-Marine Corps Court of Military Review decision for delivery to individual military defense counsel and civilian defense counsel, if any.

b. *Delay in service.* Delivery of the Navy-Marine Corps Court of Military Review decision to the accused shall be accomplished as soon as possible, unless delay is expressly authorized by the Judge Advocate General.

c. *Change in place of confinement.* To avoid delay in service, it is imperative that the Judge Advocate General, as well as the designated confinement activity, be notified when the place of confinement or temporary custody, as designated in the initial court-martial order, is changed. In addition, any activity which receives information indicating that a promulgation package has been misaddressed because of any such change shall immediately notify those concerned.

d. *Action by general court-martial authority.* Upon receipt of a promulgation package, the officer exercising general court-martial jurisdiction will determine whether the accused is still under his jurisdiction. He shall also take reasonable steps to forward a copy of the Navy-Marine Corps Court of Military Review decision for delivery to the military judge, trial counsel, and each defense counsel. The inclusion of copies of the Court's decision in the promulgation package for the military judge and all counsel, and the delivery of such copies to them, including those prepared for delivery by the general court-martial authority to individual military defense counsel and the civilian defense counsel, if any, is a matter of courtesy, not a matter of right.

(1) *Accused transferred.* If the accused has been transferred from that jurisdiction, the package will be forwarded by endorsement (copy to Judge Advocate General) to the officer currently exercising general court-martial jurisdiction over the accused. If the current location of the accused is unknown, communication by expeditious means to the convening authority should be initiated, keeping the Judge Advocate General informed.

(2) *Accused present.* If the accused is under the jurisdiction of the recipient of the promulgation package and present within his command, action shall be taken as follows:

(a) The accused's copy of the Navy-Marine Corps Court of Military Review decision, with the endorsement thereon, and the petition for review form shall be delivered to the accused.

(b) The accused's signature should be obtained on the postcard receipt. If the accused refuses to sign the receipt, a certificate of personal service reciting the facts shall be prepared.

(c) The date of service shall be noted on the copy of the Navy-Marine Corps Court of Military Review decision marked for the general court-martial authority and the copy marked for the accused's commanding officer, if appropriate, and the copies filed accordingly.

(d) The postcard receipt or certificate of personal service should be forwarded promptly to the Judge Advocate General.

(3) Accused on leave awaiting appellate review, administratively separated prior to completion of appellate review, or absent without leave from his assigned. ship or station. When personal delivery of the accused's copy of the decision of the U.S. Navy-Marine Corps Court of Military Review cannot be accomplished because the accused is on leave awaiting appellate review pursuant to Art. 76a, UCMJ, and the provisions of the Naval Military Personnel Manual or Marine Corps Orders, as appropriate, the accused has been administratively separated prior to completion of appellate review, or the accused is absent without leave from his assigned ship or station, the following shall apply:

(a) The service of a copy of the decision of the U.S. Navy-Marine Corps Court of Military Review upon the appellate defense counsel of record, if any, will ordinarily be accomplished by the Clerk of the Court. If the promulgation package does not indicate that such service has been accomplished, if required, the officer exercising general court-martial jurisdiction over the command to which the accused was last attached will promptly notify the Officer in Charge, U.S. Navy-Marine Corps Appellate Review Activity, who shall cause a copy of the decision of the U.S. Navy-Marine Corps Court of Military Review to be served upon the appellate defense counsel of record, if any, personally or by certified mail.

(b) Upon notification of such service upon the appellate defense counsel, if required, the officer exercising general court-martial jurisdiction will forward the promulgation package by first class certified mail to the accused at an address provided by the accused prior to departing on appellate leave or administrative separation, or if no such address has been provided by the accused or the accused is an unauthorized absentee, to the latest address listed by the accused in his official service record.

(c) The general court-martial authority shall cause a certificate of service by certified mail to be executed, and together with the original and one copy of the postal receipt for certified mail, indicating the date of such mailing, to be promptly forwarded to the Judge Advocate General.

(4) *Return of accused or notification of correct address within appeal period.* If the accused returns to his assigned ship or station or advises his commanding officer of his correct address within the 60-day-appeal period and has not received his copy of the Navy-Marine Corps Court of Military Review decision, a copy of the promulgation package shall be served upon him as provided in subsections d(2) or (3) above, as appropriate. If he returns to the naval service within the appeal period at some place other that his assigned ship or station, the promulgation package, a copy of the certificate of service by certified mail, and a copy of the postal receipt of first class certified mail shall be transmitted by the most expeditious means to such place for personal service upon him. In either case, the required endorsement, notifying the accused of his right to petition the U.S. Court of Military Appeals, should be modified by appropriate endorsement informing him that his appeal period is limited to 60 days from the date of the mailing of the Navy-Marine Corps Court of Military Review decision by certified mail. A receipt from the accused for his copy of the decision of the Navy-Marine Corps Court of Military Review or certificate of service by certified mail, as appropriate, and the postal receipt of first class certified mail shall be forwarded to the Judge Advocate General.

(5) *Effect of the mailing of the decision of the Navy-Marine Corps Court of Military Review by first class certified mail.* The date of the mailing of the decision of the Navy-Marine Corps Court of Military Review constitutes notification to the accused and commences the running of the 60-day appeal period. If no petition for review has been filed with the U.S. Court of Military Appeals, action will be taken in the same manner as though the accused had been served personally on the date of such mailing.

0134 EXECUTION OF SENTENCE

a. *General.* When the sentence of an enlisted man or warrant officer as affirmed by the Navy-Marine Corps Court of Military Review includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for one year or more, it may not, except as provided in section 0135, be executed until completion of appellate review, i.e., expiration of the 60-day appeal period if no petition for review is filed, or final review by the U.S. Court of Military Appeals. When such sentence as affirmed by the Navy-Marine Corps Court of Military Review does not include, unsuspended, a dishonorable or bad conduct discharge, or confinement for one year or more, it may be executed without further delay. See section 0124 for requirements concerning issuance of promulgating orders.

b. *Execution of punitive discharge.* In addition to the foregoing requirements, and notwithstanding the fact that the sentence may have been duly ordered executed, a punitive discharge may not in fact be executed until the provisions of SECNAVINST 5815.3 series have been complied with.

0135 REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE

a. *General.* Prior to completion of appellate review, an accused may request immediate execution of the unexecuted portion of his sentence, following completion of the confinement portion thereof, if any, in those cases in which his sentence as affirmed by the Navy-Marine Corps Court of Military Review:

(1) Includes an unsuspended punitive discharge; and

(2) Either does not include confinement, or the confinement portion thereof has been or will be completed prior to 30 days from the date the accused is served with a copy of the Navy-Marine Corps Court of Military Review decision.

b. *Conditions of approval.* Such requests may be approved by the officer exercising general court-martial jurisdiction subject to the following conditions:

(1) That the accused has received a copy of the decision of the Navy-Marine Corps Court of Military Review in his case;

(2) That the accused has had fully explained to him his right to petition the U.S. Court of Military Appeals for grant of review;

(3) That the accused does not have an appeal pending before the U.S. Court of Military Appeals;

(4) That the accused does not intend to appeal to the U.S. Court of Military Appeals but, nevertheless, understands that his request for immediate release does not affect his right seasonably to petition the U.S. Court of Military Appeals;

(5) That the accused has consulted counsel of his own choice; and

(6) That Naval Clemency and Parole Board review, under the provisions of SECNAVINST 5815.3 series, if applicable, has been completed.

c. *Execution of unexecuted portion of sentence.* Upon approval of such requests, the officer exercising general court-martial jurisdiction shall order the unexecuted portion of the sentence to be duly executed.

d. *Form of request for immediate execution of discharge.* The prescribed form is set forth in Appendix A-1-k. Three signed copies of the request shall be transmitted to the Judge Advocate General.

0136 FILING OF COURT-MARTIAL RECORDS

a. *General courts-martial.* All records of trial by general court-martial shall, after completion of final action, be filed in the Office of the Judge Advocate General.

b. *Special courts-martial.* Records of trial by special court-martial which (1) involve an officer accused or (2) have been acted upon by the Navy-Marine Corps Court of Military Review, including those cases which have been returned to the officer exercising general court-martial jurisdiction for further action, shall, after completion of final action, be filed in the Office of the Judge Advocate General. All other special court-martial records shall be filed in the manner provided below for summary courts-martial.

c. *Summary courts-martial.*

(1) *Shore activities.* Officers having supervisory authority who are in command of shore activities shall retain original records of proceedings for a period of two years after final action. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, (Military Personnel Records), General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132.

(2) *Fleet activities.* Officers having supervisory authority who are in command of fleet activities, including Fleet Air Wings and Fleet Marine Forces, shall retain original records of proceedings for a period of three months after final action. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, (Military Personnel Records), General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132.

PART E—MISCELLANEOUS MATTERS

0137 FINANCIAL RESPONSIBILITY FOR COSTS INCURRED IN SUPPORT OF COURTS-MARTIAL

Financial responsibility for costs incurred as the result of necessary activities of appointees to or witnesses called before courts-martial will be governed by the following:

a. *Travel, per diem, fees, and mileage.*

(1) The costs of travel and per diem of military personnel and civilian employees of the Department of the Navy, but excluding that of personnel attached to the Navy-Marine Corps Trial Judiciary, when acting as military judges of courts-martial, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by personnel attached to the Navy-Marine Corps Trial Judiciary, when acting as military judges of courts-martial, will be charged to the operation and maintenance allotment of the Judge Advocate General, or as provided in memorandums of understanding between the Judge Advocate General and Commandant of the Marine Corps.

(2) The costs of fees and mileage of civilians other than employees of the Department of the Navy will be charged to the operating budget which supports the temporary additional duty travel funds of the appropriate Navy or Marine Corps convening authority. See, change 17, Navy Comptroller Manual, Volume VIII, paragraph 075145.

b. *Services and supplies.*

(1) The following costs of services and supplies provided by an activity in support of courts-martial will be charged to the operation and maintenance allotment of the convening authority:

(a) In-house costs which are direct, out-of-pocket, identifiable, and which total $100 or more in a calendar month; and

(b) Costs which arise under contracts which were entered into in support of courts-martial.

(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity which provides the services or supplies.

0138 FEES OF CIVILIAN WITNESSES

a. *Method of payment.* The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed, public voucher for such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial.

(2) Summary court officer.

(3) Counsel for the court in a court of inquiry.

(4) Recorder or junior member of a board to redress injuries to property.

(5) Military or civil officer before whom a deposition is taken.

The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, Vol. 2, Chap. 5), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before changes are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its Territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher.

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b. *Obtaining money for advance tender or payment.* Upon written request by one of the officers listed in subsection a. above, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in subsection a above, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witness for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

c. *Reimbursement.* If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in subsection a above, to the effect that the payment was necessary.

d. *Certificate of person before whom deposition is taken.* The certificate of the person named in subsection a above, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned. See paragraph 117b(9), MCM.

e. *Payment of accrued fees.* The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

f. *Computation.* Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

g. *Non-transferability of accounts.* Accounts of civilian witnesses may not be transferred or assigned.

h. *Signatures.* Signatures of witnesses signed by mark must be witnessed by two persons.

i. *Rates for civilian witnesses prescribed by law.*

(1) *Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a naval tribunal, or at a place where his deposition is to be taken for use before such court or fact-finding body, will receive fees, subsistence, and mileage as provided in 28 U.S.C. 1821. Witness and subsistence fees are not prorated. Instead any fractional part of a calendar day expended in attendance or qualifying for subsistence entitles the witness to payment for a full day. Further, nothing in this subsection shall be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to witnesses for:

(a) attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpoena or as a direct result of invitational orders; or

(b) for travel which is performed prior to being duly summoned as a witness; or

(c) for travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this subsection.

(2) *Civilian witnesses in Government employ.* A civilian in the employ of the Government, when summoned as a witness, shall be paid as authorized by Joint Travel Regulations.

j. *Supplemental construction of section.* Nothing in this section shall be construed as permitting or requiring the payment of fees to those witnesses not requested in accordance with paragraph 115a, MCM, or whose testimony is determined not to meet the standards of relevancy and materiality set forth in that paragraph.

k. *Expert witnesses.*

(1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the nearest officer exercising general court-martial jurisdiction having a judge advocate assigned in other than an additional duty, temporary duty, or temporary additional duty capacity. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commander, Naval Base, Pearl Harbor. See subsection 1. below for fees payable to foreign nationals.

(2) The provisions of subsection i above are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with paragraph 116, MCM, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

l. *Payment of witness fees to foreign nationals.* Officers exercising general court-martial jurisdiction in areas other than a state of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

0139 WARRANTS OF ATTACHMENT

Warrants of attachment shall not be issued without prior approval of the Judge Advocate General, acting for the Secretary of the Navy, in each case.

0140 SECURITY OF CLASSIFIED MATTER IN JUDICIAL PROCEEDINGS

a. *General.* Every precaution shall be taken by convening authorities, military judges, presidents of special courts-martial, summary courts, and trial counsel to protect the security of classified matter involved in judicial proceedings. If a trial of a case involves classified information, the convening authority, military judge, president of a special court-martial, summary court, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of OPNAVINST 5510.1 series and paragraph 33f, MCM.

b. *Security clearance of personnel.* If classified matter is to be used for prosecution, appropriate personnel security clearances in accordance with the Department of the Navy Security Manual for Classified Information must be granted to all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court. If the accused is represented by civilian defense counsel, such counsel must likewise be cleared before classified matter may be disclosed to him. The necessity for clearing the accused himself, and the practicability of obtaining such clearance rests in the sound discretion of the convening authority and may be one of the considerations in his determination that permission to try a particular case be requested from the Secretary of the Navy in accordance with the provisions of paragraph 33f, MCM. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this subsection have not been complied with, the military judge or president of a special court-martial or summary court shall adjourn the court and refer the matter to the convening authority.

c. *Procedures concerning spectators.* See section 0115 which prescribes procedures necessary to prevent the dissemination of classified information to other than authorized persons.

0141 JAG ETHICS COMMITTEE

a. *Establishment and membership.* There is established in the Office of the Judge Advocate General a standing committee entitled the JAG Ethics Committee, which is comprised of the Assistant Judge Advocate General (Civil Law), who is to act as chairman; the Assistant Judge Advocate General (Military Law); the Assistant Judge Advocate General (Military Personnel and Management); the Deputy Director, Judge Advocate Division, Headquarters, Marine Corps; and the Executive Assistant, who is to act as recorder.

b. *Functions.* The committee will consider ethical problems and allegations of malpractice which may arise within the judge-advocate community, serve as liaison with the other military services and law associations in such matters, and submit recommendations, as appropriate to the Judge Advocate General.

0142 SUSPENSION OF COUNSEL

a. *General.* When a person, military or civilian, has, pursuant to paragraph 43, MCM, and these regulations, been suspended from acting as counsel before courts-martial and the U.S. Navy-Marine Corps Court of Military Review, he shall not, during the period of such suspension, be eligible to so act. Such suspension is separate and distinct from any matter involving contempt, discussed in paragraphs 10 and 118, MCM, and from withdrawal of certification made pursuant to Articles 26 and 27, UCMJ.

b. *Grounds for suspension.* Suspension shall be accomplished only when, by his personal or professional conduct, a person has demonstrated that he is so lacking in competency, integrity, or ethical or moral character as to be unacceptable as counsel before a court-martial or the U.S. Navy-Marine Corps Court of Military Review. Specific grounds for suspension include, but are not limited to:

(1) Demonstrated incompetence while acting as counsel during pretrial, trial or post-trial stages of a court-martial;

(2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics;

(3) Fabricating papers or other evidence;

(4) Tampering with a witness.

(5) Abusive conduct toward the court-martial, the U.S. Navy-Marine Corps Court of Military Review, the military judge, or opposing counsel;

(6) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel (see paragraphs 42, 44, 46, and 48, MCM);

(7) Conviction of an offense involving moral turpitude or conviction of a violation of Article 48, UCMJ;

(8) Disbarment by a State or Federal court or the U.S. Court of Military Appeals; or

(9) Indefinite suspension as counsel by the Judge Advocate General of the Army or Air Force or the General Counsel of the Treasury Department.

Action to suspend should not be initiated because of personal prejudice or hostility toward counsel, nor should such action be initiated because counsel has presented an aggressive, zealous, or novel defense, or when his apparent misconduct as counsel stems from inexperience or lack of instruction in the performance of legal duties. The Code of Professional Responsibility of the American Bar Association is considered to be generally applicable as rules of professional conduct for persons acting as counsel before naval courts-martial and the Navy Court of Military Review, and is quoted, in part, for guidance:

"DR 2-110 Withdrawal from Employment.

"(A) In general.

"(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

"(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

"(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

"(B) Mandatory withdrawal.

"A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

"(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

"(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

"(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

"(4) He is discharged by his client.

"(C) Permissive withdrawal.

"If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

"(1) His client:

"(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

"(b) Personally seeks to pursue an illegal course of conduct.

"(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

"(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

"(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

"(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

"(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

"(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

"(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

"(5) His client knowingly and freely assents to termination of his employment.

"(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

"DR 4-101 Preservation of Confidences and Secrets of a Client.

"(A) 'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

"(B) Except when permitted under DR 4-101 (C), a lawyer shall not knowingly:

"(1) Reveal a confidence or secret of his client.

"(2) Use a confidence or secret of his client to the disadvantage of the client.

"(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

"(C) A lawyer may reveal:

"(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

"(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

"(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

"(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

"(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101 (C) through an employee."

"DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer .

"(A) A lawyer shall decline proffered employment if the excerise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105 (C).

"(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105 (C).

"(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the excerise of his independent professional judgment on behalf of each.

"(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment."

DR 6-101 Failing to Act Competently.

"(A) A lawyer shall not:

"(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

"(2) Handle a legal matter without preparation adequate in the circumstances.

"(3) Neglect a legal matter entrusted to him."

"DR 7-101 Representing a Client Zealously.

"(A) A lawyer shall not intentionally:

"(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101 (B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

"(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

"(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102 (B).

"(B) In his representation of a client, a lawyer may:

"(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

"(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

"DR 7-102 Representing a Client Within the Bounds of the Law.

"(A) In his representation of a client, a lawyer shall not:

"(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

"(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

"(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

"(4) Knowingly use perjured testimony or false evidence.

"(5) Knowingly make a false statement of law or fact.

"(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

"(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

"(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

"(B) A lawyer who receives information clearly establishing that:

"(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

"(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

"DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.

"(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

"(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

"DR 7-104 Communicating With One of Adverse Interest.

"(A) During the course of his representation of a client a lawyer shall not:

"(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

"(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client."

"DR 7-106 Trial Conduct.

"(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

"(B) In presenting a matter to a tribunal, a lawyer shall disclose:

"(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

"(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

"(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

"(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissable evidence.

"(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

"(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

"(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

"(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

"(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

"(7) Intentionally or habitually violate any established rule of procedure or of evidence.

"DR 7-107 [sections (A) - (E)] Trial Publicity. [See also: section 0115]

"(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

"(1) Information contained in a public record.

"(2) That the investigation is in progress.

"(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

"(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

"(5) A warning to the public of any dangers.

"(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

"(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

"(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

"(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

"(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

"(5) The identity, testimony, or credibility of a prospective witness.

"(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

"(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

"(1) The name, age, residence, occupation, and family status of the accused.

"(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

"(3) A request for assistance in obtaining evidence.

"(4) The identity of the victim of the crime.

"(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

"(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

"(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

"(8) The nature, substance, or test of the charge.

"(9) Quotations from or references to public records of the court in the case.

"(10) The scheduling or result of any step in the judicial proceedings.

"(11) That the accused denies the charges made against him.

"(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

"(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence."

c. *Action to suspend.*

(1) *General.* Action to suspend a person from acting as counsel before courts-martial and the Navy Court of Military Review will be initiated only when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to suspension of counsel, full consideration shall be given to the effectiveness and appropriateness of such measures as warning, admonition, instruction, proceedings in contempt and other punitive action.

(2) *Report of grounds for suspension.* When information as to the occurrence or existence of any ground for suspension comes to the attention of a member of a court-martial, a military judge, appointed counsel, staff judge advocate, or member of the Navy Court of Military Review, such information shall be reported, together with appropriate supporting information, to the officer exercising general court-martial jurisdiction over the command of such reporting officer or to the Judge Advocate General. Prompt action shall be taken by the recipient of such report to dispose of the matter in the interest of proper administration of justice, except that, if the alleged disqualifying conduct occurs during the trial of a particular case and involves counsel for the accused, action may be deferred pending completion of the trial. RCS JAG 5813-5.

(3) *Hearing.* If the officer exercising general court-martial jurisdiction or the Judge Advocate General is of the opinion that there is probable cause to believe that a ground for suspension exists, and that other remedial measures are not appropriate or will not be effective, he shall appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether the person involved should be temporarily or indefinitely suspended. The board so appointed shall consist of two or more members who are certified as qualified to act as military judge or counsel of general courts-martial pursuant to Article 26 or 27, UCMJ. The board shall cause notice to be given to the counsel concerned, informing him of the misconduct or other disqualification alleged and affording him the opportunity to appear before it for a hearing. The counsel shall be permitted at least five days subsequent to notice to prepare for a hearing. Failure to appear on a set date subsequent to notice will constitute a waiver of appearance. Upon ascertaining the relevant facts after notice and hearing, the board will report its findings and recommendations based thereon to the officer who appointed the board. If the board was not convened by the Judge Advocate General, the officer who appointed the board shall, (unless he deems the investigation incomplete, in which case he may direct further investigation and hearing) forward the report of the board to the Judge Advocate General together with his comments and recommendations concerning suspension of the person involved.

(4) *Action by the Judge Advocate General.* Upon receipt of the report of a board, the Judge Advocate General shall determine whether the person involved shall be suspended as counsel and whether such suspension shall be for a stated term or indefinite, and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon petition of the person who has been suspended, and upon good cause shown, or upon his own motion, modify or revoke any prior order of suspension.

(5) *Effect upon other actions.* Notwithstanding these regulations, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as military judge or as counsel before general courts-martial made pursuant to Article 26 or 27, UCMJ.

0142A ALLEGATIONS OF MISCONDUCT OR DISABILITY OF MILITARY JUDGES; REVOCATION OF CERTIFICATION

a. *General.*

(1) The demands of military justice require that military judges maintain the highest standards of professional competence and ethical conduct. An indispensable component of such standards is the requirement that military judges exercise independent judgment, unhampered by fear of undue criticism, and unswayed by partisan or pecuniary interests. The Judge Advocate General is vested with the authority and concomitant obligations of ensuring that such standards are maintained and of preserving the integrity of judicial independence.

(2) The procedures prescribed herein provide a mechanism whereby the Judge Advocate General may ensure that judicial competence and conduct remain at the highest level, while preserving to the maximum extent the cherished concept of an independent judiciary.

(3) The procedures prescribed herein are not to be used to attack collaterally the merits of any substantive or procedural ruling of a military judge, or any other judicial decision reviewable under any provision of law.

(4) It is the policy of the Judge Advocate General that any action or recommendation to revoke the certification of a military judge will normally be initiated only when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to decertification of a military judge, full consideration shall be given to the effectiveness and appropriateness of such measures as therapy, warning, instruction, and punitive action.

b. *Report of allegations of misconduct or disability.*

(1) When information comes to the attention of a member of a court-martial, a military judge, appointed counsel, staff judge advocate, or member of the U.S. Navy-Marine Corps Court of Military Review indicating that a person acting or about to act as trial judge is or has been unable to discharge properly all the duties of his or her office by reasons of mental or physical disability, or is or has been guilty of professional or personal misconduct of such a serious nature as to demonstrate that he or she is lacking in integrity or judicial demeanor or is otherwise unworthy or unqualified to perform the duties of a military judge, such information should be reported to the Chief Judge, Navy-Marine Corps Trial Judiciary.

(2) Action may, when appropriate, be initiated to revoke his or her certification to act as a military judge under Article 26 of the UCMJ.

c. *Form of Report.*

The report shall:

(1) Be in writing and be signed, under oath, by the individual reporting the information;

(2) State that the individual reporting the information has personal knowledge or belief or has otherwise received reliable information indicating that:

(a) The military judge is, or has been, unable to discharge properly all the duties of his or her office by reason of mental or physical disability; or

(b) The military judge is or has been guilty of professional or personal misconduct of such serious nature as to demonstrate that he or she is lacking in integrity or judicial demeanor; or

(c) The military judge is otherwise unworthy or unqualified to perform the duties of a military judge.

(3) Set forth the grounds of the allegation together with all facts relevant thereto; and

(4) Be forwarded to the Chief Judge, Navy-Marine Corps Trial Activity, via the cognizant Circuit Judge (unless that officer is the subject of the report).

d. *Consideration of the Complaint by the Chief Judge, Navy-Marine Corps Trial Activity.*

(1) Upon receipt of the report, the Chief Judge:

(a) Shall dismiss any report relating to the merits of any substantive or procedural ruling of a military judge, or any other judicial decision reviewable under any provision of law, and return the report to the reporting individual.

(b) Shall consider the appropriateness of temporarily reassigning the military judge to nonjudicial duties, pending completion of investigation, hearing, and such other proceedings as may be necessary for full resolution of the issues; if the Chief Judge determines that such assignment is appropriate, he may so order.

(i) Temporary reassignment shall not normally be appropriate unless the requirements of military justice unequivocally demand otherwise. Factors which would support such a finding include, but are not limited to, the following:

(A) The nature of the misconduct alleged is clearly prohibited by those A.B.A. Canons of Professional and Judicial Conduct applicable to military justice.

(B) There is a substantial likelihood that the misconduct or disability alleged will result in revocation of certification.

(C) The nature of the disability or misconduct alleged would bring into doubt the fairness of judicial proceedings conducted by the military judge.

(ii) The order of temporary reassignment shall not relieve a presiding military judge from duties in courts-martial in which, at the time of the signing of the order, the court has been previously assembled, unless a contrary intent is expressly stated in such order.

(c) May direct that an officer be appointed to investigate informally the allegations of the report to determine whether further action is warranted. Any officer so appointed shall be a judge advocate, certified as qualified to act as military judge or as counsel in a general court-martial (Articles 26 and 27, UCMJ), and shall be senior in rank to the military judge who is the subject of the investigation (*hereinafter* the respondent).

(2) If, based upon informal investigation, the Chief Judge is of the opinion that there is reasonable cause to believe that a ground for temporary or permanent revocation of certification exists, and that other remedial measures are not appropriate or will not be effective, he shall appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether judicial discipline or decertification is appropriate. The board so appointed shall be comprised of at least 3 officers, each member of which shall be senior in rank to the respondent, and shall be a judge advocate, certified to act as counsel for a general court-martial (Article 27, UCMJ), and at least one-third of whom are certified as qualified to act as military judges (Article 26, UCMJ). If the respondent is a member of the Marine Corps, the majority of the members of the board shall be Marine Corps judge advocates.

(3) The senior officer of the board shall cause notice to be given to the respondent, informing him or her of the misconduct or other disqualification alleged and affording him or her the opportunity to appear before it for a hearing. The respondent shall be permitted at least ten (10) days subsequent to receipt of notice to prepare for a hearing. Failure to appear on a set date subsequent to notice may constitute a waiver of appearance. The respondent shall be afforded the rights of a party, as set forth in section 0304 of this Manual, except that, in the event the respondent wishes to have military counsel appointed to represent him or her, he or she shall not be afforded the right to select or identify a particular military counsel for that purpose. Upon ascertaining the relevant facts after notice and hearing, a written report of the findings and recommendations based thereon will be made to the Chief Judge, and a copy thereof shall be provided to the respondent. The respondent shall be given an opportunity to comment on the report.

(4) The Chief Judge shall (unless he or she deems the investigation incomplete, in which case he or she may direct further proceedings) forward the report of the investigation to the Judge Advocate General, together with his or her comments and recommendations relative thereto.

e. *Grounds justifying disciplinary sanction of or decertification of a military judge.*

(1) Applicable Standards of Conduct.

(a) In accordance with the provisions of Sections 0142b and Appendix A-1-p(1) of this Manual, the following standards of the American

Bar Association are generally applicable as a guide to the personal and professional conduct of military judges:

(i ABA Code of Judicial Conduct.

(ii) ABA Code of Professional Responsibility.

(iii) ABA Fair Trial and Free Press.

(iv) ABA Function of the Trial Judge.

(b) In view of the unique mission and personal requirements of the military setting, the letter of many of the canons of the above-mentioned codes are not applicable to the military judge and lawyer. Accordingly, the codes are to be used as a guide only, and a failure to comply with a specific wording of a canon is not to be construed as a violation of the codes where common sense would indicate to a reasonable person that there is a distinction between the civilian context, which the codes were drafted to embrace, and the unique concerns of the military setting, wherein the codes serve as a general guide.

(c) Those standards of personal and professional conduct relating to the military judge and lawyer set forth in the Uniform Code of Military Justice, the *Manual for Courts-Martial, 1969 (Rev.)*, and this Manual govern the conduct of the military judge.

(2) Where consistent with the statement of policy set forth in subsection a of this section, and with the provisions of subsection b of this section, specific grounds justifying disciplinary sanction of or decertification of a military judge include, but are not limited to, the following:

(a) The military judge has willfully violated an applicable standard of personal or professional conduct.

(b) The military judge has been convicted of any felony, or of a misdemeanor involving moral turpitude.

(c) The military judge has been disbarred by a state or Federal court of the United States.

(d) The military judge has been convicted of a violation of Article 48, UCMJ.

(e) The military judge has clearly demonstrated incompetence while acting as military judge during pretrial, trial or post-trial stages of a court-martial.

f. *Action by the Judge Advocate General.*

(1) Upon receipt of the report of the Chief Judge, Navy-Marine Corps Trial Judiciary, the Judge Advocate General shall determine whether the respondent shall be decertified as qualified to act as military judge and whether such decertification shall be for a stated term or indefinite; or whether the findings of the board do not warrant further action; and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon his motion or upon petition of the respondent, modify or revoke any prior order of decertification or dismissal of a report.

(2) Notwithstanding these regulations, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as a military judge made pursuant to Article 26, UCMJ.

0143 PETITION FOR NEW TRIAL UNDER ARTICLE 73, UCMJ

a. *Statutory provisions.* Article 73, UCMJ, provides, "At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition."

b. *Time limitations.* If the petition for new trial was placed in military channels within two years after approval of a sentence by the convening authority, regardless of the date of its receipt in the Office of the Judge Advocate General, it shall be considered to have been seasonably filed. Except in extraordinary circumstances, petitions will not be acted upon by the Judge Advocate General until all reviews in the field, contemplated by Article 65, UCMJ, have been completed.

c. *Submission procedures.* If the petitioner is on active duty the petition shall be submitted to the Judge Advocate General via the petitioner's commanding officer, the command which convened the court, and the command that took supervisory authority action on the case. If the supervisory authority has the record of trial he will forward it as an enclosure to his endorsement on the petition. The endorsement shall include information and comments as deemed appropriate. If the petitioner is no longer on active duty the petition may be submitted directly to the Judge Advocate General. If more than one court-martial is involved, a separate petition shall be filed for each trial.

d. *Contents of petitions.* The form and contents of petitions for new trial are specified in paragraph 109e, MCM. In addition, the petition shall include the following:

(1) Place of trial.

(2) Command title of the organization at which the court-martial was convened (convening authority).

(3) Command title of the officer exercising general court-martial jurisdiction over the petitioner at the time of trial (supervisory authority).

(4) Type of court-martial which convicted the petitioner.

e. *Receipt in the Office of the Judge Advocate General.*

(1) If the case is pending before the Navy-Marine Corps Court of Military Review or the U.S. Court of Military Appeals, or will be so pending, the petition will be referred for action to the Navy-Marine Corps Court of Military Review or the U.S. Court of Military Appeals, as appropriate. If referred for action to the Navy-Marine Corps Court of Military Review, such court shall take action in accordance with Courts of Military Review Rules of Practice and Procedure.

(2) In all other cases the Judge Advocate General may take one or more of the following actions as appropriate:

(a) Return the petition for compliance with the procedural requirements of paragraph 109e, MCM and section 0143 of this Manual.

(b) Deny the petition if relief is not warranted under the criteria set forth in paragraph 109d, MCM.

(c) Grant the petition if relief is warranted under the criteria set forth in paragraph 109d, MCM.

(d) Refer the petition to one or more officers for review and preparation of a recommendation for the Judge Advocate General. In the event such a referral is made, counsel for the Government and for the petitioner will be designated and a hearing with oral argument after submission of briefs may be permitted.

0144 APPLICATION FOR RELIEF UNDER ARTICLE 69, UCMJ, IN CASES WHICH HAVE BEEN FINALLY REVIEWED

a. *Statutory provisions.* Article 69, UCMJ, provides in pertinent part, "Notwithstanding section 876 of this title (article 76) the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused. When such a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before -

(1) October 1, 1983; or

(2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title [article 65(b)], the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time."

b. *Time Limitations.* An application for relief must be placed in military channels, if the applicant is on active duty, or be deposited in the mail, if the applicant is no longer on active duty, before 1 October 1983 or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority, or in a special court-martial case which requires action under Article 65(b), UCMJ, the officer exercising general court-martial jurisdiction, whichever is later, to be considered by the Judge Advocate General. An application filed after those time limits may be considered if the Judge Advocate General determines, in his sole discretion, that "good cause" for failure to file within the time limits has been established by the applicant.

c. *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant's commanding officer, and the command that convened the court, and the command that took supervisory authority action on the case. If the original record of trial is held by the supervisory authority, he shall forward it as an enclosure to his endorsement. This endorsement shall also include information and comment on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

d. *Contents of applications.* All applications for relief shall contain:

(1) Full name of the applicant;

(2) Social Security number and branch of service, if any;

(3) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;

(4) Address at time the application is forwarded;

(5) Date of trial;

(6) Place of trial;

(7) Command title of the organization at which the court-martial was convened (convening authority);

(8) Command title of the officer exercising general court-martial jurisdiction over the applicant at the time of trial (supervisory authority);

(9) Type of court-martial which convicted the applicant, and sentence adjudged;

(10) General grounds for relief which must be one or more of the following:

(a) Newly discovered evidence;

(b) Fraud on the court;

(c) Lack of jurisdiction over the accused or the offense;

(d) Error prejudicial to the substantial rights of the accused;

(11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.);

(12) Any other matter which the applicant desires to submit;

(13) Relief requested; and

(14) Facts and circumstances to establish "good cause" for a failure to file the application within the time limits prescribed in 0144b above; and

(15) If the application is signed by a person other than the applicant pursuant to section 0144d of this Manual, an explanation of the circumstances rendering the applicant incapable of making application.

The applicant's copy of the record of trial will *not* be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

e. *Signatures on applications.*

Unless incapable of making application himself, the applicant shall personally sign his application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by applicant's spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when he is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person

other than the applicant, the circumstances rendering the applicant incapable of making application shall be set forth in the application. (See item (15) to section 0144c).

0145 SET OFF OF INDEBTEDNESS OF A PERSON AGAINST HIS PAY

a. *Court-martial decisions.* When the United States has suffered loss of money or property through the offenses of selling or otherwise disposing of, or willfully damaging, or losing military property, willfully and wrongfully hazarding a vessel, larceny, wrongful appropriation, robbery, forgery, arson, or fraud for which persons, other than accountable officers as defined in NAVCOMPTMAN 041501-041503, have been convicted by court-martial, the amount of such loss consitutes an indebtedness to the United States which will be set off against the final pay and allowances due such persons at the time of dismissal, discharge, or release from active duty.

b. *Administrative determinations.* In addition, when the Government suffers a loss of money and competent authority has administratively determined that the loss occurred through the fraud, forgery, or other unlawful acts of such persons as described in subsection a above, the amount of such loss shall be setoff as described in subsection a. "Competent authority," as used herein, shall be the commanding officer of such persons and the administrative determination shall be made through an investigation pursuant to the JAG Manual and approved on review by a general court-martial authority.

c. *Army and Air Force property.* When the money or property involved belongs to the Army or the Air Force, and such service determines liability through the procedures provided by the authority of 37 U.S.C. §1007 and demands set off against the final pay and allowances of any naval service personnel, setoff shall be effected in accordance with subsection a above.

d. *Voluntary restitution.* Immediate recovery action may be instituted on the basis of a voluntary offer of the member to make restitution of all or part of any indebtedness to the Government. The voluntary offer constitutes assumption of pecuniary responsibility for the loss and, as such, is sufficient to authorize checkage of current pay, if required, to collect the amount of the indebtedness. See also 10 U.S.C. §6161 and SECNAVINST 7220.38 series concerning the possibility of remission or cancellation of an enlisted member's indebtedness. Nothing herein shall be construed as precluding set off against final pay in other cases when such action is directed by competent authority.

0146 AUTHORITY TO PRESCRIBE REGULATIONS RELATING TO THE DESIGNATION AND CHANGING OF PLACES OF CONFINEMENT

The Chief of Naval Personnel and the Commandant of the Marine Corps are authorized to issue joint regulations as required to appropriate authorities relating to the designation and the changing of places of confinement of naval prisoners (see BUPERSINST 1640.5 series). Convening authorities, officers exercising supervisory authority, and commanding officers operating correctional facilities are considered appropriate authorities within the meaning of this section. The Chief of Naval Personnel is further authorized to designate places of confinement when necessary, to change the designation, and to authorize the transfer of prisoners between naval places of confinement and to Federal penal or correctional institutions.

0147 APPREHENSION BY CIVILIAN AGENTS OF THE NAVAL INVESTIGATIVE SERVICE

Pursuant to the provisions of paragraph 19, MCM, and under the authority of Article 7(b), UCMJ, any civilian agent of the Naval Investigative Service, who is duly accredited by the Director, Naval Investigative Service, and who is engaged in conducting an investigation within the investigative jurisdiction of the Naval Investigative Service as established in departmental directives, which investigation has been duly requested by, or is at the direction of, competent U. S. Navy or U. S. Marine Corps authority, may apprehend, if necessary, persons subject to the UCMJ or to trial thereunder, upon reasonable belief that an offense has been committed and that the person apprehended committed it. A person so apprehended must be taken promptly before his commanding officer or other appropriate military authority. Such a civilian agent may apprehend a commissioned officer or a warrant officer only pursuant to specific orders of a commissioned officer except where such an apprehension is necessary to prevent disgrace to the service, the commission of a serious offense, or the escape of one who has committed a serious offense. Such a civilian agent, even though not conducting an investigation relating to the person apprehended, may also apprehend a person subject to the UCMJ upon observation of the commission of a felony or a misdemeanor amounting to a breach of the peace occurring in the agent's presence. A person so apprehended must be delivered promptly to his commanding officer or other appropriate military authority.

0148 SEARCH AND SEIZURE; FORMS

a. The Military Rules of Evidence authorize the "Secretary concerned" to implement additional requirements or limitations concerning certain of the Rules. In this regard:

(1) Rule 305(d)(2) – No implementation.

(2) Rule 312(g) – No implementation.

(3) Rule 315(d)(1) – No implementation.

(4) Rule 315(d)(2) – A "commander," as that term is defined in Rule 315(d)(1), may not delegate the authority to authorize searches to military judges of the Navy, Marine Corps, or any other armed force. Navy and Marine Corps military judges may not exercise any delegated authority to authorize searches from a "commander" of any armed force.

(5) Rule 315(d)(3) – No implementation.

(6) Rule 315(f)(2) – No implementation.

(7) Rule 315(h)(2) – No regulations further implementing Rule 315(h)(2) concerning inventories, are prescribed. No exceptions to Rule 315(h)(2) are authorized.

(8) Rule 317(c)(2) – See SECNAVINST 5520.2 series. No further implementation.

b. Appendices A-1-l and A-1-m contain suggested formats for recording information pertaining to authorization for searches (with instructions), and the granting of consent to search. These formats are designed as guides in processing problems which may arise in connection with cases involving searches and seizures. Use of these formats, even as guides, is not mandatory, but rests within the discretion of local commanders.

0149 INTERROGATION OF CRIMINAL SUSPECTS FORM

Appendix A-l-n contains a suggested format which may henceforth be utilized by investigative personnel in cases in which criminal suspects desire to waive their rights concerning self-incrimination, and to make statements. This format is designed as a guide and its use is not mandatory.

0150 COURT-MARTIAL CASE REPORT

The form NAVJAG 5813/2, Court-Martial Case Report (Rev. 1-73), is designed to serve as a statistical source for planning purposes and to afford the Judge Advocate General an early source of information regarding cases which may evoke public or Congressional interest. RSC JAG 5813-1. A Case Report will be submitted by all military judges of the Navy-Marine Corps Trial Judiciary. Supplies of NAVJAG Form 5813/2 (Rev. 1-73) are available in the Forms and Publications Segment of the Navy Supply System under Stock Number S/N 0105-LF-100-8161. A form containing sample entries is set forth in Appendix A-l-o.

0151 FURNISHING OF ADVICE AND COUNSEL TO ACCUSED PLACED IN PRETRIAL CONFINEMENT

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that when a person is placed in pretrial confinement immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee's right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

0152 RULES OF PRACTICE BEFORE COURTS-MARTIAL

All defense counsel, individual defense counsel (both military and civilian), and trial counsel will be governed in their courtroom conduct and in their relationships with each other and with the military judge by the Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial, set forth in appendix A-1-p.

0153 UTILIZATION AND INSTRUCTION OF BAILIFFS

A bailiff should be present at every trial by court-martial unless his presence is excused by the military judge. The Bailiff's Handbook, contained in appendix A-1-q, sets forth the principal duties of bailiffs and will be utilized by trial counsel for instructing the bailiff, in consonance with the directions of the military judge.

0154 COURT-MARTIAL FORMS

a. *List.* The forms listed below are used in courts-martial by the naval service:

SF 1156	Public Voucher for Fees and Mileage of Witnesses
SF 1157	Claim for Fees and Mileage of Witness
DD 453	Subpoena for Civilian Witness
DD 454	Warrant of Attachment
DD 455	Report of Proceedings to Vacate Suspension
DD 456	Interrogatories and Depositions
DD 457	Investigating Officer's Report
DD 458	Charge Sheet
DD 490	Verbatim Record of Trial
DD 491	Summarized Record of Trial
DD 493	Extract of Military Records of Previous Convictions
DD 494	Court-Martial Data Sheet (Optional)
DD 1722	Request for Trial Before Military Judge Alone
NAVJAG	5800/9 Criminal Activity, Disciplinary Infractions and Court-Martial Report (Rev. 11-77) and 5800/9A Supplemental Report (Rev. 11-77)
NAVJAG	5813/1 Court-Martial Data (Rev. 11-72)
NAVJAG	5813/2 Court-Martial Case Report (Rev. 1-73)

b. *How to obtain forms.* The above-designated forms are available from the Forms and Publications Segment of the Navy Supply System as cognizance symbol "I" material and may be obtain in accordance with the instructions contained in Navy Stock List of Forms and Publications, NAVSUP Publication 2002. Marine Corps activities will requisition forms in accordance with instructions contained in Chapter 22 of Marine Corps Unified Material Management System Manual, Marine Corps Order P-4400.84.

c. *Forms prescribed by MCM.* Where forms are prescribed by the Manual for Courts-Martial, but are not immediately available, convening authorities may improvise as necessary, using the MCM and appendices thereto as guides.

0155 APPLICATION UNDER ARTICLE 74(b), UCMJ, FOR THE SUBSTITUTION OF AN ADMINISTRATIVE FORM OF DISCHARGE FOR A PUNITIVE DISCHARGE OR DISMISSAL

a. *Statutory provisions.* Article 74(b), UCMJ. provides that the "Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial."

b. *Submission procedures.* Applications for relief will be submitted to the Secretary using the following address: Secretary of the Navy (Judge Advocate General, Code 20), 200 Stovall Street, Alexandria, Virginia 22332. Except in unusual circumstances, applications will not normally be approved if received within five (5) years of the execution of the punitive discharge or dismissal, or within five (5) years of disapproval of a prior request under Article 74(b), UCMJ.

c. *Contents of the application.* All applications shall contain:

(1) Full name of the applicant;

(2) Social Security Number, service number (if different), and branch of service of the applicant;

(3) Present age and date of birth of the applicant;

(4) Present residence of the applicant;

(5) Date and place of the trial, and type of court-martial which resulted in the punitive discharge or dismissal;

(6) Command title of the convening authority of the court-martial which resulted in the punitive discharge or dismissal;

(7) Offense(s) of which the applicant was convicted at, and finally approved sentence resulting from, the trial which resulted in the punitive discharge or dismissal;

(8) Date the punitive discharge or dismissal was executed;

(9) Applicant's present marital status, and number and ages of dependents, if any;

(10) Applicant's civilian criminal record (arrest(s) with disposition, and conviction(s)), both prior and subsequent to the court-martial which resulted in the punitive discharge or dismissal;

(11) Applicant's entire court-martial record (offense(s) of which convicted and finally approved sentence(s)), and nonjudicial punishment record (including offense(s) and punishment(s) awarded);

(12) Any military administrative discharge proceedings (circumstances and disposition) initiated against the applicant;

(13) Applicant's full employment record since the punitive discharge or dismissal was executed;

(14) The specific type and character of administrative discharge requested pursuant to Article 74(b), UCMJ (a more favorable administrative discharge than that requested will not be approved);

(15) At least three but not more than six character affidavits. (The character affidavits must be notarized, must indicate the relationship of the affiant to the applicant, and must include the address of the affiant as well as specific reasons why the affiant believes the applicant to be of good character. The affidavits should discuss the applicant's character primarily as reflected in the civilian community subsequent to the punitive discharge or dismissal which is the subject of the application);

(16) Any matters, other than character affidavits, supporting the considerations described in section 0155c(17), below;

(17) A statement by the applicant, setting forth the specific considerations which the applicant believes constitute "good cause", so as to warrant the substitution of an administrative form of discharge for the punitive discharge or dismissal previously executed. (In this connection, Article 74(b) does not provide another regular or extraordinary procedure for the review of a court-martial. Questions of guilt or innocence, or legal issues attendant to the court-martial which resulted in the punitive discharge or dismissal, are neither relevant nor appropriate for consideration under Article 74(b). As used in the

statute, "good cause" was envisioned by Congress to encompass only a Secretarial exercise of clemency and ultimate control of sentence uniformity. Accordingly, in determining what constitutes "good cause" under Article 74(b), the primary Secretarial concern will be with the applicant's record in the civilian community subsequent to his or her punitive separation. Material submitted by the Article 74(b) applicant should be consistent with the foregoing).

d. *Signature on application.* Unless incapable of making application himself or herself, the applicant shall personally sign the application, under oath, before a notary or other official authorized to administer oaths. If the applicant is incapable of executing the application, the application may be signed under oath and submitted by the applicant's spouse, next of kin, executor, guardian or other person recognized as a personal representative by the law of the applicant's domicile. One is considered incapable of executing an application for purposes of this section only when the applicant is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person other than the applicant, the circumstances rendering the applicant incapable of making sworn application shall be set forth in the application, with appropriate documentation.

e. *Privacy Act Statement.* Disclosure of personal information requested by subparagraph 0155c is voluntary; however, failure to accurately provide all requested information may result in the application being denied because of inadequate documentation of good cause.

Chapter II

ADMINISTRATIVE FACT-FINDING BODIES-GENERALLY

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0201 GENERAL

a. *Definitions*

(1) An "administrative fact-finding body" is any one of a number of administrative, as distinguished from judicial, entities, including single individuals functioning as such, which is employed to collect and record information respecting some subject.

(2) A "JAG Manual Investigation" is an administrative fact-finding body constituted under any portion of the regulations set forth in chapters II through X of this manual. RCS JAG 5830-1.

b. *Functions*

(1) The primary function of all administrative fact-finding bodies constituted under these regulations is to search oút, develop, assemble, analyze, and record all available information relative to the matter under investigation. Such bodies are required to formulate clearly expressed and consistent findings of fact.

(2) The collateral function of a court of inquiry and, when expressly so directed by the convening authority, a formal fact-finding body, is to afford a hearing, of the nature and scope prescribed, to any person whose conduct or performance of duty is subject to inquiry or who has a direct interest in the subject of the inquiry.

c. *Purpose.* The primary purpose of all administrative fact-finding bodies constituted under these regulations is to provide convening and reviewing authorities with adequate information upon which to base decisions in the matters involved. These bodies are administrative and not judicial; their reports are, therefore, purely advisory; their opinions, when expressed, do not constitute final determinations or legal judgments; and their recommendations, when made, are not binding upon convening or reviewing authorities.

d. *Privacy Act compliance.* When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e) (3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a.

0202 NEED AND IMPORTANCE

a. *General.* The collection and preservation of important information by fact-finding bodies convened under these regulations are vitally necessary and useful in a great many respects. Some of the purposes served are described in the following subsections.

b. *Efficient command or administration.* Fact-finding reports may provide convening and reviewing authorities with information essential to the efficient operation of the fleet, its readiness, or improved administration of the Department of the Navy. The reports are also routed to interested bureaus, systems commands and offices of the Navy Department. The reports thus may become the basis for various actions of importance, such as:

(1) Reevaluation of operational practices or standards.

(2) Redesign and improvement of material or equipment.

(3) Modification or adoption of instructions, regulations, and procedures.

(4) Timely and accurate reply to inquiries concerning incidents of legitimate public interest, with accompanying improved public relations.

c. *Proper disposition of claims for or against the , Government.* See chapters XX through XXIV.

d. *Redress of injuries to property.* See Article 139, UCMJ and chapter X.

e. *Administrative determinations respecting personnel and former personnel.* Reports of fact-finding bodies provide the basis for making administrative determinations respecting personnel and former personnel. Examples of such determinations within the service are: Whether the time required for treatment of an illness or injury must be "made up" after what should otherwise have been the end of an enlistment or period of obligated active service because such illness or injury is held to have been due to the individual's own misconduct; whether an illness or injury is the result of "intentional misconduct or willful neglect" within the meaning of disability separation statutes; whether an illness or injury was incurred in the line of duty while *employed* on inactive duty training or active duty for training; whether, and in what degree any commendatory or adverse action respecting an individual should be taken. Examples of administrative determinations outside the service are entitlement of dependents of deceased personnel to dependency and indemnity compensation, based upon whether the evidence of record (not findings or opinions) indicates the death to have been due to the individual's willful misconduct; and whether personnel accountable for funds or property may be eligible for relief from personal liability for losses, based upon affirmative showings of record that there was no negligence of commission or omission on the part of the accountable persons which may have caused or contributed to the loss. Rights as a party (see chapter III) to formal fact-finding proceedings are accorded persons to afford them an opportunity to assure that all matter favorable to them is set forth on the record to be available in connection with any future administrative determination.

0203 INVESTIGATIONS UNDER SPECIAL REGULATIONS

a. *General.* In addition to the investigations required by these regulations, various other investigative efforts are required by other regulations. A single incident requiring investigation may require only an investigation in accordance with these regulations or may require only investigation under other regulations not included herein. On the other hand, an incident may require investigation under both these regulations and other regulations, in which case, dependent upon the other regulations involved, separate proceedings may be required or combined proceedings may be permissible. Care must be exercised in determining what investigations may be required and to what extent these investigations may be combined. The following broad guidelines are set forth to assist in making this determination.

b. *Single-purpose investigations.* If the only requirement is for an investigation under regulations not included herein, then those regulations alone should govern and an administrative fact-finding body under these regulations should not be convened. For example, if there is no other basis for investigation than prospective disciplinary action, a preliminary inquiry under paragraphs 32b and 33a, MCM, or a pretrial investigation under Article 32, UCMJ and paragraph 34, MCM should be conducted without recourse to the proceedings of a fact-finding body under these regulations.

c. *Special situations wherein JAG Manual investigation contraindicated or to be conducted and report prepared and routed separately and apart from other required procedures.* A JAG Manual investigation should normally not proceed at the same time as a law-enforcement type of investigation by the Federal Bureau of Investigation, Naval Investigative Service, local police department, command investigative unit or armed services police unit. This will avoid interference with law-enforcement type investigations.

d. *Noncombinable investigations.* An administrative fact-finding body under these regulations may be required and ordered in addition to, but not in lieu of, certain inquiries, the proceedings of which are controlled by other regulations. For example:

(1) Situation reports prescribed by articles 0739 and 0743 U.S. Navy Regulations, 1973, or other situation reports prescribed by bureau manuals or Departmental regulations.

(2) Investigations conducted by the Naval Investigative Service pursuant to SECNAV Instruction 5520.3 series. See 0212.

(3) Investigations conducted by an inspector general or his assistants.

(4) Hearings conducted pursuant to the Disability Evaluation Manual (SECNAVINST 1850.4).

(5) Investigation of aircraft accidents pursuant to OPNAVINST 3750.6 series.

(6) Administrative letter reports respecting security violations prescribed by OPNAVINST 5510.1 series.

(7) Reports of accidental injury pursuant to OPNAVINST 5102.1 series.

0204 TYPES OF ADMINISTRATIVE FACT-FINDING BODIES

a. *General.* On the basis of membership, there are three types of administrative fact-finding bodies that may be constituted under these regulations: courts of inquiry, boards of investigation, and single individual investigations. On the basis of procedure, there are two types of administrative fact-finding bodies: formal and informal. A *formal* fact-finding body is one which utilizes a formal hearing procedure, ordinarily takes all testimony under oath, often maintains a verbatim record of all evidence, and may be authorized to designate parties. On the other hand, an *informal* fact-finding body normally employs the preliminary inquiry method of gathering evidence, using telephone inquiries, correspondence, and informal interviews to assemble the required information conveniently and expeditiously; it shall not be authorized to designate parties.

b. *Courts of inquiry.* The principal distinguishing features of a court of inquiry are as follows:

(1) It consists of at least three commissioned officers as members and a commissioned officer as counsel for the court.

(2) It is convened by a written appointing order.

(3) It must take all testimony under oath and record all proceedings verbatim regardless of whether such is directed in the appointing order.

(4) Persons subject to the UCMJ whose conduct is subject to inquiry must be designated parties.

(5) Persons subject to the UCMJ or employed by the Department of Defense who have a direct interest in the subject of inquiry must be designated parties upon their request to the court.

(6) It possesses the power to subpoena civilian witnesses (see Article 47 UCMJ which provides for prosecution in U.S. district court for failing to appear, to testify, or to produce evidence).

c. *Formal fact-finding bodies.* The principal distinguishing features of a formal fact-finding body (other than a court of inquiry) are:

(1) It consists of one or more commissioned officers as member or members.

(2) It is convened by a written appointing order.

(3) The appointing order may direct that the body take all testimony under oath and/or record all proceedings verbatim.

(4) It utilizes a formal hearing procedure.

(5) Persons whose conduct is subject to inquiry or who have a direct interest in the subject of the inquiry may not be designated parties unless such designation is expressly authorized in the appointing order.

(6) It does not possess the power to subpoena witnesses (unless convened under Article 139, UCMJ and chapter X of this Manual).

d. *Informal fact-finding bodies.* The principal distinguishing features of an informal fact-finding body are:

(1) It may consist of one or more officers, senior enlisted persons, or civilian employees of the Department of the Navy as member or members.

(2) It may be convened orally or in writing.

(3) It is ordinarily not directed to take testimony under oath or to record testimony verbatim.

(4) It utilizes informal procedures in collecting evidence.

(5) It shall not designate any person as a party to the investigation.

(6) It does not possess the power to subpoena witnesses.

0205 SELECTION OF TYPE AND DESIGNATION OF PARTIES

a. *Selection of type.* The several types of fact-finding bodies described in the preceding section have been prescribed to accommodate the variety of situations which must be investigated in the naval service. Thus, the type of fact-finding body to be ordered should be determined in large measure by the powers which the fact-finding body will require, the paramount purposes of the inquiry, the relative seriousness of the subject of the inquiry, the probable complexity of the factual issues involved, and other such factors. Much must be left to the judgment and discretion of officers in command. In general, however, the following guidelines should be considered in the selection of the type of fact-finding body to be employed. Where it appears that the incident under investigation involves substantial loss of life or where significant international or legal consequences may be involved, either a court of inquiry or a formal board of investigation, depending generally upon whether the power to subpoena civilian witnesses is involved, should be considered. Other serious incidents requiring investigation, such as grounding of a ship, collision, flooding, and other major afloat casualties, particularly if significant loss of life resulted, should ordinarily be investigated by a formal board or formal single officer investigation, but in such cases the requirement of a verbatim record need not invariably be imposed. In other less serious cases, an informal fact-finding body will ordinarily be adequate. In any case in which there is doubt as to the type of fact-finding body which should be ordered, the matter may be referred to a superior in command for determination.

b. *Designation of parties.* In connection with the selection of the type of fact-finding body to be convened, the desirability of designating parties and affording the persons so designated all of the rights of a party should be considered. In general, the designation of parties before JAG Manual investigations is unnecessary because other regulations, which provide for further judicial or administrative proceedings before adverse action may be taken against an individual (see section 0304g), contain adequate safeguards to protect the rights of persons so involved. If, however, the subject matter of the inquiry involves such disputed issues of fact that a risk of substantial injustice to a person or persons would exist if he or they were not afforded the rights of a party during the investigation, a court of inquiry or a formal fact-finding body which is expressly authorized to designate parties should be ordered. In other cases, subject to the considerations set forth in the preceding subsection, a formal fact-finding body which is not authorized to designate parties or an informal fact-finding body will suffice.

0206 CONVENING AUTHORITY–POWER TO ORDER

a. *Courts of inquiry.* Any person authorized to convene a general court-martial, or any other person designated by the Secretary of the Navy for that purpose, may convene a court of inquiry (Article 135, UCMJ).

b. *Other fact-finding bodies.* Any officer in command may order a board of investigation or a one-man investigation, either formal or informal. The appointing order of a fact-finding body other than a court of inquiry may be issued or subscribed by an officer who holds a delegation of authority for such purpose from the convening authority. For the purposes of these regulations, "officer in command" means an officer authorized to convene any type of court-martial under Articles 22, 23, or 24, UCMJ, or authorized to impose disciplinary punishment under Article 15, UCMJ, including officers in charge. However, only a commanding officer empowered to convene a special court-martial, or superior authority, may order an investigation which involves redress of injury under Article 139, UCMJ.

0207 CONVENING AUTHORITY–RESPONSIBILITY TO ORDER

a. *General considerations.* The officer in command of the unit or activity concerned is primarily responsible for initiating an investigation into an incident arising in his command. If the command is an afloat command, the investigation of incidents occurring ashore may be conducted by another appropriate command when the afloat command so requests and certifies that conduct of the investigation by the afloat command would not be feasible. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, when there is doubt as to who should convene the fact-finding body, the matter shall be referred to the area coordinator, or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, who shall resolve the issue and ensure that any required investigation is conducted.

b. *Incidents far removed from location of command.* Activities required to make investigations under these regulations are often geographically far removed from the scene of incidents for which they have investigating responsibility. A typical situation of this kind is one where personnel are injured or die under doubtful circumstances at a place distant from the activity to which they are assigned (*see* section 0806) or where mobile activities are required to move from the locality of an incident before a thorough investigation can be completed. In such cases, commanding officers and officers in charge may refer the incident which is subject to investigation to another officer qualified to order the appropriate fact-finding body if the investigation can be more expeditiously accomplished by a different activity. In such situations in the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, a request to conduct an appropriate investigation should be made to the area coordinator, or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, in whose geographic area of responsibility the incident occurred. The request shall contain all available information such as: time, place, and nature of the incident; full names, grades, service numbers, and leave status of naval personnel involved; names and addresses of all known witnesses; all available evidence and statements; and copies of all reports of the incident made to the Navy Department or other superior authority under existing regulations.

c. *Incidents involving injuries.* In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, when a member of the naval service is injuried and is admitted to a naval hospital, the commanding officer of the hospital shall, if no investigation is being made of the incident, promptly report the matter to the area coordinator, or to the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, in whose geographic area of responsibility the incident occurred. Similarly, if a dependent of a member of the uniformed services is injured under circumstances involving a third person, and is furnished hospital, medical, surgical, or dental care at government expense, the agency, facility, or individual who provided such care shall promptly notify the cognizant action JAG designee (*see* section 2401c) so that he may ensure that, if required, the necessary investigation is made.

d. *Incidents involving more than one command.* Whenever more than one activity is involved in an incident requiring investigation, a single investigation should be conducted if practicable. Such an investigation may be convened by the officer in command of any of the activities concerned and all activities concerned shall cooperate in the expeditious conduct of the investigation. If any difficulty or dispute arises in the convening of such an investigation, the matter should be referred to the common superior of all officers involved. If there is reason to believe that the conduct or performance of duty of the officer in command of any activity involved in the incident may be subject to inquiry, the common superior of all the officers involved should convene the investigation. For example, when a collision occurs between ships of different type commands, a single investigation should be convened by the command superior in the operational chain of command. Whenever a single investigation of an incident involving more than one activity is conducted, all activities involved shall provide all available information to the activity conducting the investigation.

e. *Incidents involving Marine Corps personnel.* If a member of the Marine Corps is involved in an incident requiring the investigation while in an area which is geographically far removed from the parent command, the individual's commanding officer shall request investigative assistance from a Marine commander authorized to convene general courts-martial in the immediate area in which the incident occurred, or in the absence of such an officer, from the Commanding General, 4th Marine Division.

0208 DISSOLUTION

A fact-finding body is considered dissolved when its duties have been completed, and no formal order to that effect is necessary.

0209 THE RECORD OF PROCEEDINGS–GENERALLY

a. *Content.* The record of proceedings or the investigative report must be made as complete as possible to ensure preservation of evidence relating to the incident investigated and to give authorities in the Department of the Navy an adequate basis on which to take action. Illustrative facts which should be established and supported by enclosures in particular situations are outlined in chapter IX. These suggestions, however, are not all inclusive. Any information that will aid understanding or help reviewers weigh the evidence should be included. Except for facts of which a court may take judicial notice (*see* paragraph 147, MCM), an administrative fact-finding body should not arrive at findings of fact which are not supportable by evidentiary enclosures or personal observation.

b. *Copies.* Each copy of the record of proceedings or investigative report must be complete within itself and should contain all enclosures and exhibits. Sufficient complete copies should be prepared to fulfill the requirements of section 0211c.

c. *Classification.* Because of the wide circulation in the Department of the Navy of records of some investigations, classified information should be omitted unless inclusion is essential. Information inherently not of a classified nature, although derived from classified messages, shall be paraphrased without identifying the original message by date-time group. A record or report containing information so derived need not be classified for this inclusion alone, provided that the information paraphrased is not classified. When classified matter is necessarily included in the record of proceedings or an investigative report, the record or report shall be assigned the classification of the highest subject matter contained therein. Encrypted versions of messages shall not be included in or attached to records of proceedings or investigative reports in which the content, substance, or purport of such message is divulged, regardless of the classification given the record or report. See Department of the Navy Security Manual for Classified Information, OPNAVINST 5510.1 series.

d. *Privacy Act compliance*. When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C.§ 552a) in accordance with section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

0210 THE RECORD OF PROCEEDINGS–ACTION BY CONVENING AND REVIEWING AUTHORITIES

a. *Intermediate routing*

(1) The record of proceedings or report of a fact-finding body shall be forwarded to and reviewed by the convening authority and appropriate superior authorities in the chain of command. No precise rule can be laid down as to the identity of appropriate superior authorities in the chain of command. The subject matter of the inquiry and the facts found will dictate the routing of the record or report for review. The record or report should be made available to all superior commanders who have a direct official interest in the recorded facts.

(2) In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, area coordinators, and subordinate commanders authorized to convene general courts-martial and designated by the area coordinator for this purpose, are considered to have a direct official interest in records or reports of investigations conducted by shore activities within the area of their cognizance and relating to a subject matter affecting their area coordination, command responsibility, or claims adjudicating authority, and, unless they direct otherwise, should be included as reviewing authorities whether or not in the chain of command.

(3) All flag and general officers in command may publish categories of subject matter of investigations which are of direct official interest to them and to their subordinates, and may direct that investigations involving other categories of subject matter be given exceptional intermediate routing. For example, a type commander might direct that investigations involving solely line of duty or misconduct determinations be routed directly to him, by-passing all echelons of authority between him and the convening authorities.

b. *Review and forwarding*. The convening authority and each field authority to whom the record of proceedings or report is routed shall transmit it by endorsement which will generally effect one of the following actions:

(1) Forward the record or report commenting that it contains no matter of direct official interest to the authority and that it is therefore transmitted without comment or recommendation.

(2) Return the record or report for further inquiry, noting any incomplete, ambiguous, or erroneous action of the fact-finding body or a prior reviewing authority.

(3) Return the record or report for further corrective action, stating in detail the inadequacy or incompleteness noted.

NOTE: The authority who convened the fact-finding body has the primary responsibility to ensure that the investigation record is in compliance with the Privacy Act of 1974 before the record is forwarded. See section 0308. The officer exercising general court-martial jurisdiction who reviews the JAG Manual investigation record has the responsibility to review the record for compliance with the Privacy Act of 1974, and if the investigation fails to comply, he shall return it to the convening authority for remedial action prior to forwarding it to the Judge Advocate General.

(4) Forward the record or report setting forth appropriate comments and recording approval or disapproval, in whole or in part, of the proceedings, findings, opinions, and recommendations. For the benefit of subsequent reviewing authorities, each shall state clearly what action he has taken, or will take, and/or his recommendations as a result of matters contained in the record. If the investigative body is also conducting a claims investigation, the reviewing authority's action will be governed by the applicable provisions of chapters XX through XXIV of this Manual; if the investigating body is also acting as a

board for redress of injuries to property, the reviewing authority's action shall be governed by chapter X of this Manual; or if the investigating body is inquiring into the loss, compromise, or subjection to compromise of classified information, the reviewing authority's action will be governed by paragraphs 4-102 and 4-104 of the Department of the Navy Security Manual for Classified Information, OPNAVINST 5510.1 Series.

c. *Disciplinary action.* Except where an individual has been fully accorded the rights of a party before a court of inquiry or a formal fact-finding body, nonjudicial punishment may not be predicated exclusively upon the proceedings of a fact-finding body (*see* section 0101d), nor may the record of proceedings or report of such fact-finding body be used in lieu of a formal pre-trial investigation as authorized by Article 32 (c), UCMJ. Nevertheless, whenever punitive or nonpunitive disciplinary action is contemplated, initiated, or taken respecting any person as the result of the incident which was the subject of inquiry, such action (its specific nature, including current status) shall be noted in the endorsement of the convening or reviewing authority. Punitive letters of censure or copies or recommended drafts thereof shall be included in an investigative report as enclosures. Nonpunitive letters or copies, or recommended drafts thereof, are private in nature and shall not be included as enclosures in an investigative report, but shall be separately forwarded to the appropriate commander for issuance.

d. *Additional information.* Each reviewing authority's action will include any information known or reasonably ascertainable at the time of the review concerning actions taken or being taken in the case but not contained in the record or previous endorsements.

0211 THE RECORD OF PROCEEDINGS AND COPIES–DISPOSITION

a. *Routing.* Except as indicated below, the complete original record or report of every JAG Manual investigation shall be routed to the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332, in accordance with the intermediate routing provided in section 0210. Except when they have a direct official interest in the recorded facts and should be included as a via addressee, the routing of the record to other commands, bureaus and offices of the Navy Department will be accomplished by the Judge Advocate General.

b. *Special Routing*

(1) Records or reports of investigations which involve Marine Corps personnel and relate to fraud, waste, and related improprieties within the Marine Corps, shortages of public property or public funds, or incidents of a sensitive nature which result or may result in extensive media exposure shall be forwarded to the Judge Advocate General via the Commandant of the Marine Corps.

(2) Records or reports of death investigations conducted pursuant to this Manual in which the adequacy of medical care is reasonably in issue shall be forwarded to the Judge Advocate General via the Naval Inspector General with an advance copy to the Judge Advocate General.

(3) Records or reports of investigations into the loss of Government property entrusted to an accountable officer shall be routed as prescribed in section 0909f.

(4) Records or reports of investigations which involve lost, missing, damaged, or destroyed property of the Marine Corps shall be routed to the Commandant of the Marine Corps as prescribed in paragraph 4022, Volume I, Marine Corps Supply Manual.

(5) Records or reports of investigations which involved loss, compromise, or subjection to compromise of classified information shall be routed in accordance with paragraph 6-104 of OPNAVINST 5510.1 series. These investigations are not sent to the Judge Advocate General.

(6) If a record of investigation is to be used as a pretrial investigation pursuant to Article 32(c), UCMJ, and the original is desired in connection with a trial by general court-martial, the original shall be retained in the field for such purpose and a complete certified copy shall be forwarded to the Judge Advocate General via appropriate authorities.

(7) If a record or report of investigation involves a claims matter or redress of injuries to property under Article 139, UCMJ, see chapter X and chapters XX through XXIV as appropriate.

c. *Routing of copies*

(1) One complete copy of the record or report of investigation shall be forwarded with the original for each intermediate reviewing authority and an additional copy shall be forwarded for the Judge Advocate General. Additionally, if a shore command

conducted the investigation upon request of an afloat command, as provided in sections 0207a and 0806, information copies of the investigation record or report shall be forwarded to interested afloat commands. With respect to the right of a party to the investigation to receive a copy, see section 0304i.

(2) In serious cases and in cases in which the convening authority considers that the Navy Department should have advance information, he shall forward an advance copy to the Judge Advocate General. Additionally, if the record or report of investigation involves a possible admiralty claim, an advance copy shall be forwarded as soon as possible to the Judge Advocate General (Admiralty Division). Respecting records or reports of investigation which may involve Medical Care Recovery Act claims, see section 2404c.

(3) U.S. Navy convening authorities shall, when security classification permits, forward an advance copy of the record or report of investigation as soon as practicable in cases involving inquiry into material damage to a ship, submarine, or Government property (except aircraft) to: Commander, Naval Safety Center, Naval Air Station, Norfolk, Virginia 23511. U.S. Navy commanders subsequently reviewing such record or report shall forward advance copies of their endorsements as above. In cases of aircraft accidents, advance copies of investigations and endorsements thereon will be forwarded to Commander, Naval Safety Center only upon his specific request.

(4) In cases involving postal losses or offenses, an advance copy of the record or report of investigation shall be forwarded by the convening authority to the Chief of Naval Operations (Postal Affairs Branch)/Commandant of the Marine Corps (Postal Affairs Branch). See paragraph 6202, U.S. Navy Postal Instructions. OPNAVINST 5112.1 series.

(5) In cases involving death or injury of personnel, the original will be forwarded with sufficient copies that the Judge Advocate General will receive the original and three copies.

0212 INVESTIGATIONS BY NAVAL INVESTIGATIVE SERVICE

a. *General.* The investigative jurisdiction and responsibilities of the Naval Investigative Service (NIS) and the field components thereof are set forth in SECNAVINST 5520.3 series. Officers in command are cautioned to comply meticulously with the provisions and spirit of that instruction. Matters pertaining to espionage, sabotage, subversive activities, fraud against the Government, and major violations of the UCMJ are included within the jurisdiction of NIS. Where the investigative service of NIS is utilized, the officer in command shall take appropriate measures to preserve evidence and to ensure that any other phases of investigation do not compromise or otherwise impede the investigative activities of NIS. In the event the officer in command deems it necessary to proceed with inquiry by a fact-finding body prior to the completion of the investigative phase by NIS, he shall first communicate with the local NIS office and establish coordination of the investigative effort. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, if the NIS office objects to the initiation of the inquiry by a fact-finding body, the matter should be referred for resolution to the appropriate area coordinator or subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose.

b. *Polygraph examinations.* DoD Directive 5210.48 of 6 October 1975, prohibits the inclusion in JAG Manual Investigations of polygraph examination reports or the results thereof. If any polygraph report or its results appear to be necessary or relevant to an informed decision by any reviewing authority for law enforcement or security purposes, an appropriate cross-reference notation should be made in the investigative report showing its availability. Polygraph examinations which are relevant to Naval investigations are normally conducted by NIS and the reports and results thereof are retained by that organization.

c. *Naval Investigative Service Reports of Investigation (ROI).* ROI should not be included in records of JAG Manual investigations. NIS investigations consist of the ROI (the narrative summary portion) and enclosures. Unless a local NISRA indicates to the contrary, clearance is not required for the inclusion of the enclosures to the ROI in a JAG Manual investigative report. If any ROI appears to be necessary or relevant to an informed decision by any reviewing authority with respect to the JAG Manual investigation, an appropriate cross-reference notation should be made in the investigative report indicating its availability.

0213 PRELIMINARY INVESTIGATION OF MAJOR INCIDENTS

a. *General.* The investigation of major incidents is sometimes complicated by the premature appointment of a court of inquiry or other formal investigative body. Without ascertaining the sequence of events and which witnesses can give enlightening testimony, the proceedings are made longer and more difficult as the result of lack of preparation prior to formal hearings. The purpose of all investigative proceedings is to inform authorities of the Department of the Navy fully and concisely as to the incident, its causes, and the responsibility therefor.

b. *Suggested procedure.* In major incidents it may be advisable to order immediately an informal one-officer investigation or informal board of investigation to ascertain the seriousness of the incident, to interview all witnesses, and to prepare a summary of their testimony. The convening authority may direct in his appointing order (oral or written) that the investigative body submit an interim oral report by a specified date. At the time of the oral report, the informal investigation may be terminated and the investigative effort directed into a court of inquiry or other formal investigation. Summaries of testimony or evidence developed in the informal investigation may be used as an aid by the later investigative body. Inasmuch as all courts of inquiry and most formal boards of investigation directed to inquire into major or complicated incidents have appointed counsel, consideration should be given to detailing the officer who conducted the informal investigation to assist counsel for the court or board.

c. *Function.* It is not the function of such preliminary investigation to fix responsibility for the incident or event. Its duties are to obtain statements of witnesses and to inform the convening authority as to the identity of the witnesses and the extent to which they can testify to pertinent facts.

0214 AUTHORITY TO ADMINISTER OATHS

A person on active duty appointed to perform investigative functions or to serve as counsel for an administrative fact-finding body within the meaning of these regulations is empowered to administer oaths in the performance of his duties. See Article 136, UCMJ.

Chapter III

PARTIES AND WITNESSES

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0301 PARTIES–DEFINITIONS

a. *Party.* A "party" is an individual who has properly been designated as such in connection with a court of inquiry or a formal fact-finding body.

b. *Subject to inquiry.* A person's conduct or performance of duty is "subject to inquiry" when the person is involved in the incident or event under investigation in such a way that disciplinary action may follow, that his rights or privileges may be adversely affected, or that his personal reputation or professional standing may be jeopardized.

c. *Direct interest.* A person has a "direct interest" in the subject of inquiry:

(1) When the findings, opinions, or recommendations of the fact-finding body may, in view of his relation to the incident or circumstances under investigation, reflect questionable or unsatisfactory conduct or performance of duty; or

(2) When the findings, opinions, or recommendations may relate to a matter over which the person has a duty or right to exercise official control.

0302 DESIGNATION OF PARTIES

a. *Courts of inquiry*

(1) Any person subject to the UCMJ whose conduct or performance of duty is subject to inquiry *shall* be designated a party before a court of inquiry.

(2) Any person subject to the UCMJ or employed by the Department of Defense who has a direct interest in the subject of inquiry *shall,* upon his request to the court or convening authority, be designated a party before a court of inquiry.

(3) Any member of the Naval or Marine Corps Reserve not subject to the UCMJ by virtue of his status whose conduct or performance of duty is subject to inquiry *may,* upon his request to the court or convening authority, be designated a party before a court of inquiry.

(4) No other person may be designated as a party unless expressly authorized by the Secretary of the Navy (Judge Advocate General).

b. *Formal fact-finding bodies*

(1) When authorized by the convening authority, any member of the naval service subject to the UCMJ whose conduct or performance of duty is subject to inquiry may be designated a party before a formal fact-finding body constituted under these regulations.

(2) When authorized by the convening authority, any member of an armed force other than the Navy and Marine Corps subject to the UCMJ; any person employed by the Department of Defense; or any member of the Navy or Marine Corps Reserve not subject to the UCMJ by virtue of his status, whose conduct or performance of duty is subject to inquiry may, upon request to the fact-finding body, be designated a party before a formal fact-finding body constituted under these regulations.

(3) No other person may be designated as a party unless expressly authorized by the Secretary of the Navy (Judge Advocate General).

c. *Informal fact-finding bodies.* No person may be designated as a party before informal fact-finding bodies constituted under these regulations.

d. *Who may designate.* Parties may be designated by the convening authority of a court of inquiry or formal fact-finding body, by any court of inquiry, or by a formal fact-finding body when expressly authorized by the convening authority, subject to the following considerations:

(1) When parties are to be designated, and it is apparent at the time of the issuance of the appointing order that a person or persons must or should be designated, the convening authority should include such designation in the appointing order. His power to designate continues during the entire proceedings before a court of inquiry or formal fact-finding body.

(2) If at any time during the course of an investigation by a court of inquiry or by a formal fact-finding body authorized to designate parties it appears to the court or body that any person not previously designated should be so designated, that person shall or may (see section 0302a and b) be informed of that conclusion, be designated a party, and be informed of and accorded his rights as such.

e. *Effect of designation.* The purpose and effect of designating an individual a party before a fact-finding body is to afford him a hearing respecting possibly adverse information concerning his conduct or performance of duty or relating to a matter over which he has a duty or right to exercise official control. The majority of investigations, although inquiring to some degree into the conduct or performance of duty of persons, result in relatively few instances in which adverse action is taken without separate administrative or judicial proceedings. The separate hearings in such cases are much more efficient and frequently are fairer to the person involved. Accordingly, as provided in section 0205b, it is generally undesirable to designate parties to investigations unless the subject matter of the inquiry involves such disputed issues of fact that a risk of substantial injustice to the person would exist if he were not afforded the rights of a party during the investigation.

0303 CHANGE IN STATUS OF A PARTY

If it no longer appears that a person previously designated as a party is involved in a material degree in the matter under investigation, his designation as a party may be withdrawn by the court of inquiry or formal fact-finding body upon application of that party, or upon the court or fact-finding body's own initiative.

0304 RIGHTS OF A PARTY

a. *General.* A person duly designated a party before a fact-finding body shall be advised of and accorded the following rights:

(1) To be given due notice of such designation.

(2) To be present during the proceedings, but not when the investigation is cleared for deliberations.

(3) To be represented by counsel. See subsection b below.

(4) To examine and to object to the introduction of physical and documentary evidence and written statements.

(5) To object to the testimony of witnesses and to cross-examine witnesses other than his own.

(6) To introduce evidence.

(7) To testify as a witness.

(8) To refuse to incriminate himself; and, if accused or suspected of an offense, to be informed of the nature of the accusation and advised that he does not have to make any statement regarding the offense of which he is accused or suspected; and that any statement made by him may be used as evidence against him in a trial by court-martial.

(9) To make a voluntary statement, oral or written, to be included in the record of proceedings.

(10) To make an argument at the conclusion of presentation of evidence.

(11) To be properly advised concerning the Privacy Act of 1974. See section 0308 and Appendix A-3-a.

NOTE: In courts of inquiry only, a party shall be advised of and accorded two additional rights:

(12) To challenge members of the court of inquiry for cause stated to the court, Article 135(d), UCMJ; section 0414 of this Manual.

(13) If charged with an offense, to be a witness at his own request and not to be called as a witness in the absence of his own request.

b. *Right to counsel*

(1) The party is entitled to be represented during the proceedings of the court or investigation by civilian counsel provided by himself at no expense to the Government; by military counsel provided by the Government at no expense to the party. Such military counsel shall be of his own selection if reasonably available; or by military counsel appointed for him by appropriate military authority. Upon request for appointed military counsel, counsel qualified under Article 27(b), UCMJ should be appointed, if practicable, and must be appointed if the court or investigation is to be used as a pretrial investigation required by Article 32, UCMJ. There are no special legal qualifications required of civilian counsel provided by the party himself or of military counsel selected by him. In any case in which the court or

investigation is to be used as an investigation under Article 32, UCMJ and the party introduces non-lawyer civilian counsel or requests non-lawyer military counsel, he must be carefully advised that he is entitled to the appointment of military lawyer counsel and that proceeding without lawyer counsel will be considered a waiver of this right. Appointed military counsel will be provided for a civilian party only under one of the following circumstances:

(a) The civilian party is in a status in which he might be subject to trial by court-martial, and the court of inquiry or investigation may be used as a pre-trial investigation under Article 32, UCMJ.

(b) Doubt exists as to the mental or physical competency of the civilian party, and he is not represented by counsel who seems capable of adequately protecting the party's interests.

(c) The convening authority directs such action on the ground that under the peculiar circumstances of the case, the interests of the Government would be best served by making military counsel available to represent the civilian party.

(2) It is the duty of counsel to represent the party to the best of his ability and to protect and safeguard the interests of the party by all honorable and legal means. If counsel for a party is absent, a court of inquiry or formal investigation shall not proceed until his return, or until new counsel for the party is retained by him or appointed for him. However, the party may waive his right to have counsel present provided the party understands his right to counsel and the effect of the waiver. The explanation of this right and any waiver thereof shall be reported verbatim in the record.

(3) When directing that a court of inquiry or formal investigation be conducted, and the medical officer states that a member to be designated a party is incompetent due to injuries or disease and will remain so for at least 60 days, the convening authority will ensure that a qualified lawyer counsel is appointed to represent the party during the proceedings of the court or investigation. Such counsel is obligated to exercise all the rights of the party as though the party were present.

c. *Explanation of rights.* At the outset of the proceeding of a court of inquiry or formal fact-finding body, all parties so designated shall be informed of the rights set forth in section 0304a, and shall be asked if explanation is desired regarding any of such rights. Further explanation shall be provided to any party who requests it. Counsel for any party may waive such information and explanation by stating to the investigative body that the party to the proceeding has been fully informed and understands his rights as a party. Upon designation of a person as a party during the course of the investigative proceeding, the same course shall be followed as regards information and explanation as to rights, and a waiver may similarly be made by counsel.

d. *Examination of previous record by party designated during proceedings; recall of witnesses.* The record of proceedings to the point the investigation has progressed will be made available for examination by a newly designated party and his counsel. Such a party may request that specified witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit the recalling of a witness, evidence may be obtained from him by means of a sworn statement. In the absence of compelling justification, investigative proceedings shall not be suspended pending the obtaining of any such statement.

e. *Previous testimony of witness thereafter designated as a party.* Any testimony given by a person as a witness prior to his designation as a party remains in the record and is considered and used thereafter without regard to his subsequent designation as a party.

f. *Person on witness stand when designated party.* If a person is on the witness stand at the time he is designated a party, or is thereafter called as a witness, see section 0305 for the procedure to be followed.

g. *Failure to accord rights*

(1) In cases where nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or formal fact-finding body before which the accused was not designated a party or accorded the

rights of a party, the procedures shall be as prescribed in section 0101d.

(2) In cases where an adverse determination respecting the contracting or incurrence of a disease or injury in line of duty or as the result of misconduct is contemplated on the basis of the record of a court of inquiry or formal fact-finding body before which the person concerned was not designated a party or accorded the rights of a party, the procedures shall be as prescribed in section 0815.

(3) In cases where a general court-martial is contemplated respecting an accused, the record of a court of inquiry or formal fact-finding body before which the accused was not designated a party or accorded the rights of a party may not be used in lieu of a formal pretrial investigation of the offenses charged against the accused. See Article 32(c), UCMJ.

(4) In cases where charges have been brought against an accused before a court-martial, military commission, or other tribunal which is required fully to observe the rules of evidence as prescribed in the UCMJ and in chapter XXVII of the MCM, sworn testimony contained in the record of proceedings of a court of inquiry before which that accused was not designated a party or accorded the rights of a party may not be received in evidence by that court-martial, military commission or tribunal unless such testimony is admissible independently of the provisions of Article 50, UCMJ.

h. *Waiver of rights of a party.* Waiver of rights listed in section 0304a which involve notice, information, or advice to be given a party (except regarding an offense of which accused or suspected), may be effected only by explicit statement on the record by party or his counsel. Advice as to the nature of any offense of which accused or suspected, advice as to the right to refrain from making any statement regarding such offense, and advice as to the possible use against him of any statement in a trial by court-martial may not be waived. See Article 31b, UCMJ. Any other right is conclusively waived by the party's failing to exercise it, unless he has made, upon the record, a request to exercise it and such request has been denied.

i. *Right to a copy of the record.* A party to an investigation is not entitled to a copy of the record or any part thereof, unless the record is to be used as a pretrial investigation under Article 32, UCMJ and trial of the party by general court-martial has been ordered. Consideration should be given to conducting a separate pretrial investigation when the record or report of the investigation contains either classified material or any unclassified material which might be of assistance in the prosecution or support of a claim against the United States. If a letter of censure or other non-judicial punishment is imposed, see section 0101f (7) concerning the right of the individual concerned to have access to a copy of the record.

0305 WITNESSES

a. *Calling witnesses.* Although only courts of inquiry and boards convened for the redress of injuries to property (see Article 139, UCMJ and chapter X) have powers to subpoena witnesses, all administrative fact-finding bodies convened under these regulations may request civilian witnesses to attend, whether or not they are connected in any way with the naval service, and may request cognizant commanding officers to make members of the Armed Forces and persons employed by the Department of Defense available to testify. No fact-finding body is confined to any Federal reservation in its quest for relevant testimony.

b. *Competency of witnesses.* Any party or other person charged with an offense relating to the matter under investigation shall be a competent witness before a court of inquiry only at his own request. 18 USC 3481. A person is charged with an offense when he has been formally accused by indictment or information, or by the preferring of charges and specifications pursuant to Article 30, UCMJ. Subject to this statutory limitation, any party or other person, regardless of whether charged with or suspected of an offense, is competent as a witness before any formal or informal fact-finding body, and may be called whether or not he requests to be a witness.

c. *Compulsory self-incrimination prohibited*

(1) No witness shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him; nor shall he be compelled to make any statement or produce evidence if the statement or evidence is not material to any issue under investigation and may tend to

degrade him. See Article 31 (a) and (c), UCMJ; paragraph 150, MCM. The fact-finding body should advise an apparently uninformed witness of his right to decline to answer any question which might tend to incriminate him.

(2) If a person called as a witness before a court of inquiry or formal board of investigation is suspected of or is charged with an offense, he shall be informed of the nature of the offense and the subject matter of the inquiry. He shall also be advised that he does not have to make any statement or give any testimony regarding the offense of which he is suspected or accused and that any statement or testimony made by him may be used as evidence against him in any subsequent trial. Article 31 (b) UCMJ. After being so informed, the right to refrain from testifying regarding the offense of which he is suspected or charged must be claimed by the witness. Despite assertion of such a right, however, the witness may be questioned on matters other than the offense of which he is suspected or charged.

(3) If a person suspected or charged with an offense is required as a witness in connection with an informal investigation, the procedure set forth in 0606d(2) will be followed.

d. *Privacy Act compliance*. When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a.

0306 WARNING REQUIRED BEFORE REQUESTING STATEMENTS REGARDING DISEASE OR INJURY

A member of the Armed Forces may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid. 10 USC 1219. Any person in the Armed Forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, shall be advised of his right not to sign such a statement.

The spirit of this section will be violated if a person, in the course of a JAG Manual investigation, obtains the member's oral statements and reduces them to writing, unless the above advice was given first.

0307 WARNING WITNESSES

The fact-finding body in its discretion may direct witnesses who are subject to naval authority, not to discuss their testimony with other witnesses or persons who have no official interest in the matter until the investigation is completed. Other witnesses may be requested, in a similar manner, not to discuss their testimony. This warning may be given to ensure that the matter before the fact-finding body can be fairly heard and to eliminate the possibility that disclosures of the substance of the testimony may influence the testimony of witnesses still to be heard.

0308 ADVICE REQUIRED BY THE PRIVACY ACT

a. *Privacy Act statements for JAG Manual investigations and claims investigations.* Pursuant to SECNAVINST 5211.5 series and the Privacy Act of 1974 (5 U.S.C. § 552a), the following procedures shall be applicable to JAG Manual investigations [chapters II through X] and claims investigations [chapters XX through XXIV], including letter reports and form reports.

(1) *Advice required.* When any individual is requested by a person acting on the Government's behalf to supply personal information about himself for a record in a system of records in the course of a JAG Manual investigation or claims investigation, the person making the request shall first provide the individual, in duplicate, a Privacy Act statement containing the particular information prescribed in SECNAVINST 5211.5 series. The original is to be signed by the individual and appended to the record of the investigation, and the copy should be retained by the individual. If the information is requested in an interview or hearing, the Privacy Act statement should also be orally summarized and explained as necessary to ensure that the individual fully understands it. The requirement for a Privacy Act state-

ment is cumulative to other applicable warnings or advisements required by the provisions of the Manual, and warnings under Article 31, UCMJ, and related court decisions, where applicable.

(2) *"Personal information" defined.* Personal information is information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. It ordinarily includes, for example, information pertaining to an individual's financial, family, social, and recreational affairs; his medical, educational, employment, or criminal history; or information that identifies, describes, or affords a basis for inferring personal characteristics, such as finger or voice prints or photographs. It ordinarily does not include such information as the time, place, and manner of, or reasons or authority for, an individual's execution or omission of acts directly related to the duties of his Federal employment or military assignment.

(3) *"System of records" defined.* A group of records under the control of the Department of the Navy or of any element of the Navy Department, operating forces, or shore establishment, from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(Note: It would be extremely rare for personal information furnished by a witness to be retrieved by the witness' name or other personal identifier.)

(4) *Social Security numbers.* An individual, even though a member or employee of the naval service, should not be requested to provide his social security number in connection with a JAG Manual investigation or claims investigation. This will obviate the need for giving the individual a social security number statement, which is generally required when an individual is requested to furnish his social security number, because JAG Manual investigations and claims investigations do not fall under the strict definition of "personnel," "finance," or "medical" records, as these terms are used in SECNAVINST 5211.5 series. The number can generally be obtained from other available records if necessary in a particular investigation.

(5) *Privacy Act statement contents.* Appendix A-3-a is a format which is intended to include every item of information that would be required for a Privacy Act statement in connection with any JAG Manual investigation or claims investigation. It should be used as a basis for tailoring a specific Privacy Act statement appropriate to the particular purposes and subject matter of each investigation and the role of the particular party or witness in relation to the matter under investigation.

(6) *Local forms.* Locally-prepared forms utilizing the format in Appendix A-3-a are authorized. Copies of local forms for Privacy Act statements prepared for use in JAG Manual investigations shall be filed on a current basis with the Judge Advocate General (Code 21). Those prepared for use in claims investigations shall be filed with the Judge Advocate General (Code 15).

b. *Reviewing authorities*

The officer exercising general court-martial jurisdiction (or, in the case of a claims investigation, the appropriate officer designated as an adjudicating authority) has the responsibility to ensure that remedial action, as appropriate, is taken to rectify any noncompliance with the Privacy Act indicated in the investigative record prior to forwarding the record to the Judge Advocate General.

c. *Records of disclosures*

Appendix A-3-b is recommended for use, as required, in recording and accounting for disclosures or information about identifiable individuals from records that are collected, used, or maintained pursuant to directives under the cognizance of the Judge Advocate General. Local reproduction is authorized.

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Article 135, UCMJ (10 USC 935) concerning courts of inquiry is quoted as follows:

"(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

"(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

"(c) Any person subject to this chapter [UCMJ] whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter [UCMJ] or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

"(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

"(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

"(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

"(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

"(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel."

0402 APPOINTING ORDER

a. *Authority to convene.* As noted in the foregoing section, any person authorized to convene a general court-martial or any other person designated for that purpose by the Secretary of the Navy may convene a court of inquiry.

b. *Form of appointing order.* Courts of inquiry are appointed by an appointing order signed by the convening authority. The appointing order shall be in official letter form addressed to the president of the court. When circumstances warrant, a court of inquiry may be convened on oral or message orders. Written confirmation of oral and message orders will be issued in each case. Message orders and all confirmations of orders shall be included in the record of proceedings of the court.

c. *Contents of appointing order.* The appointing order of a court of inquiry shall name the president, the members, and the counsel. When appropriate, it shall designate parties to the inquiry. It shall specify the time and place for initial meeting. It shall recite the specific purposes of the inquiry and shall contain explicit instructions as to the scope of the inquiry. Inasmuch as the information developed by the court is used not only by the convening authority but in many cases by authorities remote from his command, the appointing order should contain ample instructions to ensure the accomplishment of the purposes for which the court was convened. The court shall be directed to report findings of fact. If the convening authority desires, he may also direct that opinions and recommendations be submitted. The appointing order may in appropriate cases provide for the appointment of reporters and interpreters. For an example of an appointing order for a court of inquiry, see Appendix A-4-a.

d. *Seniority of members.* No member of a court of inquiry should be junior in rank to any officer designated a party in the appointing order. Should an officer senior to any member be designated a party during the proceedings, the convening authority shall be notified so that he may revise the membership in accordance with the seniority principle, if practicable. Whenever it has not been practicable to adhere to the seniority principle in membership, the convening authority shall state the reasons therefor in his action on the record of proceedings. The seniority principle is not applicable to counsel.

e. *Amendments.* The convening authority may amend the appointing order at any time to change the membership of the court of inquiry, to limit or increase the scope of the inquiry, to name additional parties, or to provide additional instructions. An example is contained in Appendix A-4-b.

f. *Advance copies.* On occasion, it may be advantageous to forward an advance copy of the appointing order to interested superiors so that they may be apprised of significant occurrences and actions being taken in connection therewith.

0403 DUTIES OF THE PRESIDENT

a. *General.* The president shall administer the oath to the counsel for the court, preserve order, and decide upon matters relating to the routine business of the court. He may recess or adjourn the court to meet at a time or place as will be most convenient and proper.

b. *Rulings.* Should a member object to the president's ruling on any matter, a vote shall be taken in closed session and the decision of the majority shall govern. In case of a tie vote, the decision of the president shall govern except as to challenges of members. See section 0414b.

c. *Obtaining information.* Whenever it appears desirable to members of the court that certain information be elicited or developed in the interest of establishing or clarifying any matter, the president will so advise counsel for the court and may direct counsel to call witnesses, to pursue further lines of questioning, or to adduce other evidence. The president and other members of a court may examine witnesses upon completion of examination by counsel.

0404 MEMBERS

a. *Attendance.* The attendance at the proceedings of a court of inquiry becomes the primary duty of an officer appointed a member. No member shall fail in his attendance at the designated time and place unless prevented by illness, ordered away, or excused by competent authority.

b. *Absence.* The court may, in the absence of a member, proceed with the inquiry only if authorized and directed to do so by the convening authority. Unless at least three members and a majority of the total membership are present, no business other than an adjournment shall be transacted. If it appears that a member will be absent for more than a short period of time and the absence reduces the court to less than three members, the convening authority shall be advised. He shall appoint additional members to ensure that at least three members will be present. Any substituted or additional member appointed shall examine the record of the proceedings conducted prior to his sitting as a member, and the fact of such examination shall be noted on the record. After such examination, each substituted and additional member shall participate fully in the subsequent proceedings of the court and in its deliberations relative to findings of fact, opinions, and recommendations.

c. *Temporary absence.* When a member of a court who has been temporarily absent returns, the record of that part of the proceedings conducted in his absence shall be examined by him, and such examination noted in the record. Such temporary absence does not preclude that member's full participation in the deliberations of the court relative to findings of fact, opinions, and recommendations.

0405 COUNSEL FOR THE COURT

a. *Requirement.* The appointment of counsel for the court is required. Whenever practicable, counsel should be qualified under Article 27(b), UCMJ. Assistant counsel for the court may be appointed. If an understanding of the matters under inquiry involves a high degree of technical knowledge, convening authorities are encouraged to appoint an officer who possesses this technical knowledge as assistant counsel. Assistant counsel need not be qualified under Article 27(b), UCMJ.

b. *Duties.* Counsel for the court shall call witnesses and conduct the direct examination of all witnesses except those requested or called by a party.

He shall arrange for a place for the court to meet, and for the assistance of reporters, interpreters, orderlies, and clerical assistants. He shall administer the oath or affirmation to all members, reporters, interpreters, and witnesses. He shall also supervise the recording of the proceedings and the preparation of the record. He shall ensure that the Privacy Act is fully complied with prior to requesting an individual to supply personal information. See section 0308 and Appendix A-3-a.

c. *Responsibility*. The primary responsibility of counsel is to exploit all practicable sources of information in order to bring out all the facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned.

d. *Absence of counsel*. If the counsel for the court is absent and there is an appointed assistant counsel, he may, in the discretion of the court, act as counsel and the proceedings may continue. Otherwise, the court shall adjourn, report the absence to the convening authority, and await the return of counsel or the appointment of a new counsel.

0406 PARTIES

See chapter III for provisions relating to parties, their rights, and their counsel.

0407 REPORTERS AND INTERPRETERS

a. *Reporters*. The reporters appointed to record the proceedings of a court of inquiry may use longhand, shorthand, or a mechanical or sound recording device. A verbatim record of the proceedings shall be compiled, subject to exceptions authorized in section 0435.

b. *Interpreters*. In all courts of inquiry where testimony is to be given in other than the English language, an interpreter shall be appointed. Prior to the assumption of his duties the interpreter shall satisfy the court that he is fully conversant with the language to be interpreted and that he has a good command of the English language. If it appears to the court that the interpreter is experiencing difficulty in interpreting, or if there is an objection by a party that the interpreter is not fully and correctly interpreting, the court shall immediately inquire into the matter. If it appears that the interpreter is not able to interpret accurately and intelligently, the court shall report this to the convening authority and request that a competent person be appointed. Until the appointment of another interpreter, no further interrogation of the witness whose testimony is to be interpreted shall be undertaken.

c. *Appointment*

(1) If additional expense to the Government is involved in the employment of reporters or interpreters, the convening authority should follow the procedure set forth in section 0110 of this Manual.

(2) The details of the appointment of reporters or interpreters will not be set forth in the record of proceedings. Only the name of such individual and the fact that he was sworn to undertake his particular duties need be shown.

0408 GENERAL PROCEDURE

A court of inquiry is governed generally by the principles of military law, applying procedural rules analogous to those for trials by general courts-martial where appropriate and not otherwise prescribed. The court should refer to the Manual for Courts-Martial, Court Martial Reports, and other authoritative legal publications for guidance. However, the mission of the court shall be given primary consideration in the determination of procedural questions not expressly covered in these regulations.

0409 PRELIMINARY PROCEDURES

A court of inquiry shall assemble at the place and, as nearly as practicable, at the time named in the appointing order. The court may adjourn, when desirable, to any place as may be convenient to the court. The members shall take their seats in the same order as on courts-martial. Courts of inquiry are usually cleared until the order constituting them and the instructions contained in the appointing order have been read and the manner of proceeding decided. Normally counsel for the court will not withdraw when the court is cleared for preliminary procedures.

0410 MEETING OF THE COURT

a. *Sessions*. The proceedings will be public unless the convening authority or the court, for security reasons or other good cause, directs that the entire proceedings or any portion thereof be closed to the public. The fact that the inquiry is not open to the public does not require exclusion of the parties to the inquiry or their counsel. If the matter to be heard requires a security clearance and individual counsel has not been granted such clearance, the convening authority shall be advised thereof; see paragraph 7-106h, Department of the Navy Security Manual for Classified Information, OPNAVINST 5510.1 series, with respect to necessary security clearance of personnel and procedures. If such a person or civilian counsel is not so cleared, section 0140b of this Manual shall be followed.

b. *Clearing the court.* The court may be cleared at any time for deliberation or consultation, whereupon the parties and their counsel will withdraw. Counsel for the court will also withdraw unless requested to remain. During an open hearing when numerous spectators are present, the court may withdraw to another room for deliberation or consultation.

c. *Spectators–publicity.* As a general rule, the public will be permitted to attend open sessions of a court of inquiry. During any session of the court the taking of photographs in the courtroom or broadcasting of the proceedings from the courtroom (radio or television) shall not be permitted.

0411 RECESS AND ADJOURNMENT

Courts of inquiry may recess or adjourn for such period as may be necessary without permission of the convening authority. However, if the adjournment is for more than three days, the convening authority shall be informed by the president.

0412 RULES OF EVIDENCE

The court is not bound strictly by the rules of evidence prescribed for trials by court-martial. Admissibility of reliable evidence, notwithstanding a legal exclusionary rule, is a matter of discretion. Nevertheless, the court must enforce constitutional and statutory personal privileges, and a general observance of the spirit of the rules contained in chapter XXVII, MCM, will promote orderly procedure and ensure a full, fair, and impartial investigation. The rights of witnesses and parties shall be carefully safeguarded.

0413 PRESENCE OF PARTY AND COUNSEL

a. *At organization of court.* As soon as the court has determined the manner of proceeding and whether the court will be open or closed to the public, each party named in the appointing order shall be called before the court. Parties may be called individually, in groups, or all together. Any party represented by counsel may appear before the court with counsel at this time, and counsel may enter waiver of record of either or both the reading of the appointing order and advice as to rights (except as to a party suspected of an offense) as to the party or parties represented by him. Unless waived, the appointing order shall be read to the party or parties before the court. The rights of a party, as set forth in section 0304, shall be fully explained by the counsel for the court. The record may state simply that the appointing order was read or the reading thereof waived, but advice as to rights shall be reported verbatim. If any party is not represented by counsel and desires such representation, the court shall recess until counsel is obtained. If it is essential that the court take testimony which might otherwise become not conveniently obtainable, then, in lieu of recessing, the court shall appoint counsel (qualified under Article 27(b), UCMJ) to represent the party until he can obtain the attendance of counsel of his choice, and proceed with the taking of such testimony.

b. *Waiver.* A party to a court of inquiry may waive his right to be present during any portion of the proceedings. This waiver must be intelligently and knowingly made by the party or his counsel and the court shall carefully consider such waiver prior to proceeding in the absence of a party. Likewise, where the party is represented by counsel, the party may waive the presence of his counsel at any session of the court. In the event of the absence of a party or his counsel, the record shall show such absence and the express waiver by the party. The record shall also affirmatively show the beginning and the end of the absence of any party or his counsel.

0414 CHALLENGE

a. *The right.* Any member of a court of inquiry may be challenged at any time during the proceedings for cause stated to the court. The court will not receive a challenge to more than one member at a time. After disclosing his ground for challenge, the party may examine the member concerning that ground. This examination may or may not be under oath, at the discretion of the challenging party, but it shall be recorded verbatim. Counsel for the court may cross-examine the challenged member. After such examination and cross-examination, any other evidence bearing on the cause for challenge will be heard.

b. *Decision on challenge.* The burden of establishing the ground for challenge is on the party who made the challenge. The challenged member withdraws when the court is cleared to determine the challenge. A majority or tie vote disqualifies the challenged member. The court decides the challenge according to the preponderance of the evidence. A sustained challenge is immediately reported to the convening authority. If it reduces the number of members below three, the court will adjourn until the convening authority appoints another member. If the membership is not reduced below three, the court may proceed with its inquiry unless otherwise directed by the convening authority.

0415 OATHS

a. *Reporter.* Every reporter shall, before entering upon his duties, make an oath or affirmation, administered by counsel for the court, in the following form:

"You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

b. *Court members.* Before the court begins the inquiry prescribed by the appointing order, counsel for the court shall administer to the members the following oath or affirmation:

"You, AB, CD, and EF, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as members of this court, and that you will examine and inquire, according to the evidence, into the matter now before you without partiality. So help you God."

c. *Counsel.* When the oath or affirmation has been administered to the members, the president of the court shall administer the following oath or affirmation to the counsel for the court, and his assistant counsel, if any (Counsel for the parties are not sworn):

"You swear (or affirm) that you will faithfully perform the duties of counsel (assistant counsel) for this court. So help you God."

d. *Interpreter.* Every interpreter shall, before entering upon his duties, make oath or affirmation, administered by counsel for the court, in the following form:

"You swear (or affirm) that you will faithfully perform the duties of interpreter to this court. So help you God."

e. *Challenged member.* If a challenged member is to be examined under oath as to his fitness to serve, counsel for the court shall administer the following oath or affirmation:

"You swear (or affirm) that you will answer truthfully to the questions touching your competency as a member of the court in this case. So help you God."

f. *Witnesses.* All persons who testify before the court shall be examined on oath or affirmation, administered by counsel for the court before they first testify, in the following form:

"You swear (or affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth. So help you God."

NOTE: In the administration of an affirmation, the word "affirm" is used in lieu of "swear." The words "so help you God," should be omitted in (1) administering an affirmation to one who does not believe in a Supreme Being; or (2) administering an affirmation to one whose individual religious belief forbids both his use of the word "swear" and a reference to the Supreme Deity in a secular proceeding.

0416 ORDER OF PRESENTATION

Witnesses are usually called for examination in the following order: Witnesses called by the counsel for the court; witnesses called by a party; witnesses called by counsel for the court in rebuttal; witnesses called by a party in rebuttal; and witnesses requested by the court. The order of examining each witness is usually direct examination, cross-examination, redirect examination, recross-examination, and examination by the court. Each witness will then be permitted to make a statement relating to matters pertinent to the inquiry not previously brought out in his testimony. Thereafter, counsel for the court or counsel for the parties will be permitted to examine the witness further concerning these matters as well as any matters touched upon in examination by the court. The foregoing order of presentation need not be followed when the court, in the exercise of its sound discretion, feels that a deviation therefrom will secure a more effective presentation of the evidence. However, such deviation shall not be permitted to prejudice the interests of any party to the inquiry.

0417 ATTENDANCE OF WITNESSES

It is the duty of counsel for the court to arrange for the attendance of all witnesses, both military and civilian. Witnesses may be summoned to appear and be examined before courts of inquiry in the same manner as provided for courts-martial. The provisions paragraph 115, MCM and sections 0138-0139 of this Manual are applicable except that terminology peculiar to courts of inquiry will be understood to apply where appropriate. A warrant of attachment (see paragraph 115, MCM) shall not be issued by a court of inquiry without prior approval of the Secretary of the Navy (Judge Advocate General).

0418 INTERVIEWING WITNESSES

Counsel for the court, any party, and counsel for any party are not precluded from interviewing any witness at any time, regardless of whether such witness has previously testified. The Privacy Act of 1974 must be complied with if an individual is asked by counsel for the court to supply personal information. See section 0308 and Appendix A-3-a.

0419 EXCLUSION OF WITNESSES

Witnesses other than a party ordinarily should be excluded from the courtroom except when they are testifying. In some cases expert witnesses may not be able to testify in an informed manner unless they are fully aware of all the circumstances surrounding the incident under inquiry. In such instances, and where the expert witness cannot give direct testimony concerning the incident, it is necessary to allow such expert to be present during the open sessions of the court in order that he may be sufficiently advised of the facts to give informed testimony as to the technical aspects of the incident. In these instances, the record must affirmatively show that the witness was present during the testimony of other witnesses.

0420 EXAMINATION OF WITNESSES

After a witness has been sworn, he should be informed of the nature of the inquiry unless it appears that he has been previously so informed. The court should protect every witness from improper questions, harsh or insulting treatment, and unnecessary inquiry into his private affairs. To prevent the false shaping of testimony through collusion, coercion, or other means, the court may request or direct a witness (see section 0307) to refrain from discussing his testimony or prospective testimony with other witnesses or any other person not having an official interest in the inquiry. See sample record of a court of inquiry in Appendix A-4-d(6) for form of instruction. See section 0305d regarding the Privacy Act of 1974.

0421 AFFIDAVITS

a. *Conditions for use of affidavits.* When the testimony of a witness is desired by a court of inquiry, but it appears that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court is sitting, or beyond the distance of one hundred miles from the place where the court is sitting; or that the witness, by reason of age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place where the court is sitting; or that the present whereabouts of the witness is unknown, an affidavit of such witness may be received in evidence by the court.

b. *Situations in which depositions are desired.* If a situation arises in which it would be desirable to take a deposition pursuant to oral or written interrogatories, this may be accomplished in such manner as the court of inquiry may deem preferable after hearing presentations by counsel for the court and any party concerned. If there is any likelihood that the deposition might be required in a subsequent court-martial proceeding, the procedures should comply with paragraph 117, MCM and guidelines prescribed in decisions of the Court of Military Appeals.

c. *Privacy Act compliance.* The Privacy Act shall be complied with if an individual is requested by a Government representative to supply personal information in an affidavit. See section 0308 and Appendix A-3-a.

0422 DOCUMENTARY EVIDENCE

The original of a document or writing is superior in evidentiary value to a copy. This is true even as regards modern photographic duplications which are susceptible to tampering through such devices as masking or page substitutions. Often, it is not feasible to incorporate originals in court of inquiry records due to such factors as inconvenience involved in obtaining them, or their required retention in official files, or for use in a subsequent court-martial or civil court proceeding. In such cases the record of proceedings should reflect the location of the original; contain the most reliable copy practicably obtainable; and indicate how its reliability was established, *e.g.*, certificate of custodian of official records or comparison of copy with original document by counsel and/or members of the court of inquiry. A court of inquiry may receive a proffered copy of a document, noting upon the record at the time that later assurance of the veracity and authenticity of the document will be submitted to the court or to the convening or reviewing authorities for attachment to the record.

0423 CLASSIFIED MATERIAL

See section 0209c of this Manual.

0424 EXHIBITS

a. *General.* Exhibits will be numbered in the sequence in which they are received in evidence. It is ordinarily impracticable to attach real evidence (physical objects such as weapons, clothing, pieces of equipment, etc.) to the record. Such exhibits should be clearly and accurately described in the record by testimony or other means (photographs, for example) so that they may be considered properly on review.

b. *Custody.* At the conclusion of the inquiry, articles received in evidence should be delivered to the convening authority (his designated representative), to be preserved for subsequent use as evidence if disciplinary action is to be taken. When final action has been taken in the case, the articles shall be returned to their rightful owners. If the owners are not known appropriate disposition may be made of them.

c. *Copies.* When original deck logs, bell books, or other naval records are received as exhibits, an accurate copy will be substituted when the record is prepared for submission. If damage of an admiralty nature is involved, the procedure set forth in chapter XII shall be followed.

0425 COMMUNICATIONS WITH THE CONVENING AUTHORITY

If at any time during the course of the proceedings it should appear, from the evidence adduced or otherwise, that circumstances exist in the light of which the convening authority might consider it advisable to enlarge or restrict the scope of the inquiry, to alter the composition of the court (whether by augmentation or substitution), or to cancel or otherwise modify any instruction set forth in the appointing order, a report should be made to the convening authority. The court may include recommendations in this report. The convening authority may take such action on this report as he, in his discretion, deems appropriate. Copies of all such communications and replies should be appended to the record.

0426 VISITING SCENE OF INCIDENT

When practicable, it may be desirable to visit the scene of the incident. Usually no testimony is taken at the scene, the sole purpose being to acquaint the court with the physical characteristics of the scene. The court should normally be accompanied to the scene by counsel for the court, the parties and their counsel, and the reporter, but any party may waive attendance by either or both himself and his counsel.

0427 STATEMENTS OF THE PARTIES

Regardless of whether a party has previously testified as a witness, he may make an unsworn statement to the court after all the witnesses have testified and before the arguments. The party may not be cross-examined upon this unsworn statement. Counsel for the court or any of the other parties to the inquiry may, however, introduce evidence to rebut any statements of fact contained therein. The statement may be oral or written, and may be made by the party or his counsel. The statement should be factual, not argumentative, in nature.

0428 ARGUMENTS

After the testimony and statements by the parties, if any, the counsel for the court and the counsel for the parties shall be permitted to present argument if they so desire. The impartial role of the counsel for the court required by section 0405c shall not be abandoned. If counsel for the court presents argument, his remarks should be in the nature of a summation of the evidence rather than partisan advocacy. The counsel for the court has the right to make the opening argument and, if any argument is made on behalf of a party, the closing argument. The court may set any reasonable limitation on the length of arguments.

0429 REPORT BY THE COURT

After all the evidence is in and all statements and arguments have been received, the court shall declare the inquiry closed. The court will then consider the evidence, statements, and arguments, and the instructions contained in the appointing order shall be carefully re-examined and scrupulously followed. At the request of the court, counsel therefor shall assist in the preparation of the findings of fact, opinions, and recommendations, or any part thereof. The report of findings of fact, opinions, and recommendations shall become a part of the record.

0430 FINDINGS OF FACT

The court, after deliberating on the evidence received during the inquiry, shall first proceed to record the facts found which constitute a detailed description of the matter investigated. Care shall be taken to state only facts. The findings of fact shall include only those facts which the court believes the evidence establishes, and nothing further. A fact need not be proved beyond a reasonable doubt to be listed as such; believable evidence in the record to support the finding is adequate. See Appendix A-4-e(1).

0431 OPINIONS

If opinions are called for in the appointing order or required by regulations, the court shall list all of its opinions drawn from and supported by the facts. Depending upon the nature of the inquiry and the provisions of the appointing order, opinions include inferences drawn from the facts; opinions as to performance of duty by individuals concerned or as to performance of functions by equipment involved; and opinions required by regulations. For guidance as to what opinions must be expressed and opinions which will not be required or expressed in specific situations, see chapters VIII and IX and Appendix A-4-e(2).

0432 RECOMMENDATIONS

When the appointing order calls for recommendations the court shall make such recommendations as are specifically directed and any others that, in its opinion, are appropriate and advisable in view of the nature of the facts found and opinions expressed. If any member of the court recommends trial by court-martial, a charge sheet, signed and sworn to by a member who has so recommended, shall be prepared and submitted to the convening authority with the record of proceedings. See paragraph 29, MCM. If a punitive letter of reprimand or admonition is recommended , a draft of the recommended letter will be prepared and forwarded with a record of proceedings. If a nonpunitive letter is recommended, a draft will be prepared and separately forwarded to the appropriate commander for issuance, but will not be included as a part of the record of proceedings. See Appendix A-1-a, A-1-b(1), A-1-c(1), and A-4-e(2).

0433 DISAGREEMENT AMONG MEMBERS

The report of the court shall be based upon the opinion of the majority. If a member does not concur with the findings, opinions, or recommendations of a majority of the court, he shall append his minority report to the record and state explicitly the parts of the majority report with which he disagrees and the reasons therefor. The minority report may also include additional findings of fact, opinions, or recommendations. See Appendix A-4-e(2).

0434 OBLIGATION OF SECRECY

Although not prohibited by his oath, no member or counsel for the court, or other person officially connected with the inquiry, shall disclose or publish any findings, opinions, or recommendations of the court or of the individual members without prior approval of the Secretary of the Navy (Judge Advocate General).

0435 PREPARATION AND SUBMISSION OF THE RECORD

a. *Composition.* The record of proceedings of a court of inquiry shall include the original appointing order and any other communications from the convening authority. It shall contain the verbatim testimony of all witnesses and all proceedings of the court, except that, in the discretion of the court, arguments presented on behalf of the Government and any party to the inquiry may be summarized. Routine proceedings of the court may, however, be described in the past tense as actions taken in lieu of present tense recording of language actually used by participants; but this shall not include advice provided as to the rights of parties or statements or actions of parties respecting the exercise or waiver of such rights. The findings of fact, opinions, and recommendations shall be included as well as documents and exhibits received in evidence by the court. See section 0424. A copy of the findings of fact, opinions, and recommendations shall be prefixed to the record. See sample record in Appendix A-4-d.

b. *Signing and authenticating.* All concurring members shall sign the record immediately under the findings of fact, opinions, and recommendations. This includes an officer who participated in only part of the proceedings (provided he participated at the time of the findings). Such limited participation shall be disclosed in the record of proceedings. In the case of a minority report, the respective reports must be signed by the members of the court concurring therein. The proceedings shall be authenticated by the signatures of the president and counsel for the court. In case the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president, and in case the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel (Art. 135h, UCMJ). See Appendix A-4-e(3).

c. *Forwarding.* The record of proceedings, together with the number of complete copies required by the circumstances, shall be forwarded to the convening authority by the president using a short letter of transmittal. See Appendix A-4-b.

d. *Privacy Act compliance.* When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

0436 ACTION OF THE CONVENING OR REVIEWING AUTHORITY ON THE RECORD

See section 0210 and Appendix A-4-c of this Manual.

0437 SAMPLE RECORD

The sample record of proceedings of a court of inquiry in Appendix A-4-d may be used as a guide in the conduct of the proceedings of a court of inquiry. Nothing in the sample record, however, shall be considered as authority to depart from the provisions of this chapter. Deviations from the sample proceedings, when not inconsistent with the provisions of this chapter, may be made when appropriate and necessary to execute the primary mission of fact-finding more effectively. When procedural steps are taken which are not covered in the sample record, the provisions of appendix 8, MCM may be consulted for general guidance.

Chapter V

FORMAL FACT-FINDING BODIES

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PART A - FORMAL BOARDS

0501 COMPOSITION

A formal board of investigation shall consist of two or more commissioned officers. When practicable, the senior member should be at least a lieutenant commander in the Navy or a major in the Marine Corps.

0502 APPOINTING ORDER

a. *Authority to convene.* For persons authorized to convene a formal board of investigation, see section 0206b of this Manual.

b. *Form of appointing order.* Formal boards of investigation are convened by an appointing order signed by the convening authority. The appointing order shall be in official letter form addressed to the senior member of the board. When circumstances warrant, a formal board may be convened on oral or message orders. Written confirmation of oral and message orders will be issued in each case. Message orders and all confirmations of orders shall be included in the record of proceedings.

c. *Contents of appointing order.* The appointing order of a formal board of investigation shall name the members and, when appropriate, separate counsel and parties. It shall specify the time and place for initial meeting. It shall recite the specific purposes of the inquiry and shall contain explicit instructions as to the scope of the inquiry. Inasmuch as the information developed by the investigative board is used not only by the convening authority but in many cases by authorities remote from the command, the appointing order should contain ample instructions to ensure the accomplishment of the purposes for which the investigation was convened. All formal boards shall be directed to report findings of fact. If the convening authority desires, he may also direct that opinions and recommendations be submitted. The appointing order may direct the administration of oaths to witnesses and the verbatim recording of the proceedings. In addition, it shall in every case state whether the formal board is or is not authorized to designate parties to the investigation. This authorization may be withheld despite the fact that the convening authority has, in the appointing order itself, designated a party or parties. This authorization may be granted broadly or it may be limited; that is, the formal board may be empowered to designate as a party any person whose conduct or performance of duty may be subject to inquiry (subject to the limitations contained in subsection 0302b), or it may be empowered to designate parties from a specified class of persons, for example, officers. The appointing order may provide for the appointment of reporters and interpreters.

d. *Seniority of members.* In those instances where the convening authority has designated or has authorized a formal board to designate parties, no member of the board should be junior in rank to any duly designated party. Should an officer senior to any member be designated a party during the proceedings, the convening authority shall be notified so that he may revise the membership in accordance with the seniority principle, if practicable. Whenever it has not been practicable to adhere to the seniority principle in membership, the convening authority shall state the reasons therefor in his action on the record of proceedings. The seniority principle is not applicable to counsel except when the junior member of a formal board is also acting as counsel.

e. *Amendments.* The convening authority may amend the appointing order at any time to change the membership of the formal board, to limit or increase the scope of the inquiry, to name additional parties, or to provide additional instructions.

f. *Advance copies.* On occasion it may be advantageous to forward an advance copy of the appointing order to interested superiors so that they may be apprised of significant occurrences and actions being taken in connection therewith.

0503 DUTIES OF THE SENIOR MEMBER

a. *General.* The senior member shall preserve order, decide upon matters relating to the routine business of the board. He may recess or adjourn the board to meet at a specified time and place.

b. *Rulings.* Should a member object to the senior member's ruling on any matter, a vote shall be taken in closed session and the decision of the majority shall govern. In case of a tie vote, the decision of the senior member shall govern.

c. *Obtaining information.* Whenever it appears desirable to the members of a formal board that certain information be elicited or developed in the interest of establishing or clarifying any matter, the senior member will so advise the counsel for the board (appointed or junior member as the case may be) and, where appropriate, may direct counsel to call witnesses to pursue further lines of questioning, or adduce such other evidence as may be deemed advisable. The senior member and the other members may examine witnesses upon completion of examination by counsel.

0504 MEMBERS

a. *Attendance.* The attendance at the proceedings of a formal board of investigation becomes the primary duty of an officer appointed a member of the board. No member of the board shall fail in his attendance at the designated time and place unless prevented by illness, ordered away, or excused by competent authority.

b. *Absence.* A formal board may, in the absence of a member, proceed with the investigation only if authorized and directed to do so by the convening authority. If it appears that a member will be absent for more than a short period of time, this fact shall be communicated to the convening authority who may appoint such new members as he may desire or direct that the investigation continue with the reduced membership.

c. *Temporary absence.* When a member of a formal board who has been temporarily absent returns, the record of that part of the proceedings conducted in his absence shall be examined by him, and the record will reflect that this has been done. Such temporary absence does not preclude that member's full participation in the deliberations of the board relative to findings of fact, opinions, and recommendations.

0505 COUNSEL FOR THE BOARD

a. *General.* It is not mandatory that separate counsel be appointed for a formal board of investigation. The convening authority may, in his discretion, appoint a separate counsel for the board but if he does not do so, the junior member of the board will act as counsel. If the convening authority appoints counsel for the board, he may also appoint such assistant counsel for the board as he may desire.

b. *Duties.* Counsel for the formal board, whether appointed or junior member, shall call witnesses and conduct the direct examination of all witnesses except those requested or called by a party. He shall arrange for a place of meeting of the board and for the assistance of reporters, interpreters, orderlies, and such clerical assistants as may be needed. Counsel for the board shall administer the oath or affirmation to the reporters, interpreters, and all witnesses. He shall also supervise the recording of the proceedings and the preparation of the record. It is the duty of the counsel for the board to bring out all the facts in an impartial manner without regard to the favorable or unfavorable effect on persons concerned. The counsel shall ensure that the Privacy Act of 1974 is fully complied with prior to requesting an individual to supply personal information. See section 0308 and Appendix A-3-a.

c. *Absence of counsel.* If the separately appointed counsel for the formal board is absent, the appointed assistant counsel, if any, may, in the discretion of the board, act as counsel and the proceedings may continue. Otherwise, the board shall communicate the fact of the absence to the convening authority who may appoint other counsel or assistant counsel, or may direct that the junior member of the board assume the duties of counsel and that the board continue with its proceedings.

d. *Qualifications.* It is not necessary that counsel for a formal board of investigation have any particular qualifications. In the interest of orderly proceedings and when available, however, convening authorities are encouraged to appoint a qualified lawyer as counsel. If an understanding of the matters under investigation involves a high degree of technical knowledge, consideration should be given to the appointment of counsel or assistant counsel who possess this technical knowledge.

0506 APPLICABLE COURT OF INQUIRY PROVISIONS

As a general rule, the principles and rules of procedure applicable to courts of inquiry set forth in chapter IV are to be applied, insofar as practicable and are not otherwise modified by the provisions of this chapter. In addition to the applicable provisions of chapters II and III, the following sections of chapter IV are applicable to formal boards of investigation:

Reporters and interpreters, section 0407 (When a verbatim record of proceeding has been directed);
General procedure, section 0408;
Preliminary procedures, section 0409;
Meeting of the board, section 0410;
Adjournment, section 0411;
Rules of evidence, section 0412;
Presence of party, section 0413;
Order of presentation, section 0416;
Interviewing witnesses, section 0418;
Exclusion of witnesses, section 0419;
Examination of witnesses, section 0420;
Affidavits, section 0421;
Documentary evidence, section 0422;
Exhibits, section 0424;
Communications with the convening authority, section 0425;
Visiting scene of incident, section 0426;
Statements of the parties, section 0427;
Report by the board, section 0429;
Findings of fact, opinions, and recommendations, sections 0430–0432;
Disagreement among members, section 0433;
Obligation of secrecy, section 0434; and
Preparation and submission of the record, section 0435 (Provisions concerning a verbatim record are applicable only when the formal board of investigation has been directed to submit a verbatim record of proceedings).

0507 CHALLENGE

a. *Basis.* There is no authority to make or entertain a challenge of a member of a formal board of investigation. If, however, any party to an investigation has reason to believe that a member should not sit, he may present evidence to show such reason. A party may examine a member relative to his fitness as a member and such examination may be under oath at the discretion of the party. If requested, counsel for the board will administer the appropriate oath set forth in section 0415.

b. *Determination.* The board will not decide the issue but shall report the facts to the convening authority who shall determine if the member shall continue to sit. Copies of the communication and reply will be appended to the record.

0508 OATHS

Members and counsel of a formal board of investigation need not be sworn. The appropriate oaths for reporters, interpreters, and witnesses (as set forth in section 0415) shall be administered by counsel for the board.

0509 ATTENDANCE OF WITNESSES

A formal board of investigation has no power to subpoena witnesses. Otherwise, the provisions of section 0417 apply to formal fact-finding bodies.

0510 ARGUMENTS

The provisions of section 0428 apply to formal boards of investigation. If, however, the junior member of the board is designated or acts as counsel for the board, he shall not make an argument. In this event, only the parties or their counsel may make argument.

0511 SAMPLE RECORD

a. *General.* The sample record of proceedings of a court of inquiry set forth in Appendix A-4-d may be used as a guide in the conduct of proceedings and preparation of the record of a formal board of investigation, with appropriate changes in terminology (for example, "board" must be substituted for "court" and "senior member" for "president"). Nothing in the sample record, however, shall be considered as authority to depart from the provisions of this chapter. Deviations from the sample proceedings, when not inconsistent with the provisions of this chapter may be made when appropriate and necessary to execute more effectively the primary fact-finding mission. When procedural steps are taken which are not covered in the sample record, the provisions of appendix 8, MCM may be consulted for general guidance.

b. *Privacy Act compliance*. When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

PART B—FORMAL ONE OFFICER INVESTIGATIONS

0512 COMPOSITION AND APPOINTMENT

A formal one officer investigation shall consist of one commissioned officer and may be convened in writing by any officer in command. See sections 0206b and 0502. Whenever practicable, the investigating officer should be senior to any designated party. See section 0502d. Counsel for the investigation may be appointed, but is not required.

0513 PROCEDURE

A formal one officer investigation is governed by the rules and principles prescribed for a formal board of investigation insofar as those rules and principles can be applied to a single officer investigation. The mission of the officer must be given primary consideration in the determination of procedural questions not covered by the sources of guidance. The investigating officer shall sign the record. The investigating officer shall fully comply with the Privacy Act of 1974 prior to requesting an individual to supply personal information. See section 0308 and Appendix A-3-a. The record of proceedings must reflect the foregoing compliance.

0514 CHALLENGE

A party has no right of challenge in a formal, one-officer investigation. If a party contends that the investigating officer cannot approach the fact-finding mission with an open mind, the facts should be reported to the convening authority for appropriate action. The officer designated to conduct the one-officer investigation is not subject to examination by the party.

Chapter VI

INFORMAL INVESTIGATIONS

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0601 COMPOSITION AND APPOINTMENT

Informal fact-finding bodies may be composed either of a single investigator or of two or more members. The single informal investigator and members of an informal board of investigation may be commissioned or warrant officers, senior enlisted persons, or mature civilian employees of the Department of the Navy. If practicable, the member or members of an informal investigation should not be junior to any person whose conduct or performance of duty will be subject to inquiry. Ordinarily, counsel is not appointed for an informal fact-finding body.

0602 APPOINTING ORDER

a. *General.* Informal fact-finding bodies may be convened by either an oral or written order of any officer in command (see section 0206b). In any case in which other than commissioned officers are appointed, or in which the appointing order expressly convenes an informal board of investigation, the fact-finding body so convened will be an informal fact-finding body under this chapter. A sample appointing order is contained in Appendix A-6-a.

b. *Contents.* In every case the appointing order should direct the fact-finding body to report findings of fact. When opinions and/or recommendations are desired the appointing order should expressly direct their submission. In any case of doubt or ambiguity as to the scope and extent of the investigation desired, the appointing order should recite the specific purpose of the investigation and provide explicit instructions as to the scope of the inquiry. The appointing order may direct that testimony or statements of some or all witnesses be taken under oath and may direct that testimony of some or all witnesses be recorded verbatim. In any case in which it is directed that testimony be taken under oath and/or recorded verbatim, the convening authority should expressly indicate that the investigation is nonetheless "informal." In any case in which detailed instructions are provided to an informal fact-finding body, consideration should be given to the issuance of a written appointing order. An appointing order should contain directions in regard to compliance with the Privacy Act of 1974, Article 31 of the Uniform Code of Military Justice, and sections 0306 and 0606d(3) of this Manual.

0603 PARTIES

Parties may not be designated by the convening authority or by the fact-finding body in an informal investigation.

0604 OATHS

A single informal investigator and members of informal boards usually are not sworn. When an informal fact-finding body takes testimony or statements of witnesses under oath, it should utilize the oath prescribed in section 0415.

0605 PROCEDURES

Inasmuch as an informal fact-finding body does not perform the collateral function of affording a hearing (see section 0201b(2)), it is free to determine and utilize the most effective methods of seeking out, uncovering, collecting, analyzing, and recording all information which is or may be relevant to a determination of all the facts and circumstances of the subject under inquiry. For example, if a board, it may divide aspects, witnesses, or evidentiary facets of the inquiry among the members for individual investigation and development, holding no collective meeting until an initial review is made of all the information collected to determine its completeness. It may call witnesses before the assembled members to present testimony in a formal manner or it may obtain relevant information from the witnesses by informal personal interview, correspondence, telephone inquiry, or other means. In short, an informal fact-finding body may employ any method which it finds most efficient and effective in performing its investigative function.

0606 THE INVESTIGATION

a. *General.* Facts and circumstances of an incident or matter under investigation are most often proved or disproved by: (1) inferences drawn from real (tangible) evidence; (2) documentary evidence; and (3) testimony or statements of witnesses. In addition, some facts or circumstances may be of such common, indisputable knowledge that no need exists to obtain specific evidence to support them. In this latter category are, for example, general facts and laws of nature, general facts of history, the locations of major elements of the Navy or Marine Corps, the organization of the Department of Defense and its components, and similar items. This includes, but is not necessarily limited to, those matters of which judicial notice may be taken (see paragraph 147, MCM).

b. *Real evidence.* Whenever the condition, location, or other characteristic of an item of real evidence is of value in tending to establish the existence or non-existence of a fact, that item or a photograph, description, or other suitable reproduction thereof should be included in the report of investigation, together with the necessary statements of witnesses identifying the item and certifying to the accuracy of the reproduction. If the physical layout of a room, compartment, or other structure is relevant, the investigation should consider the desirability of including plans or charts of the space. If the interrelated location of items in a general area is of factual significance, maps, aerial photographs, or similar projections may be of value in the report. In addition, the investigator or board members should not overlook their own value as witnesses respecting real evidence. If a member observes an item and gains impressions therefrom not adequately portrayed by a photograph, chart, map, or other representation, he should record his impressions concerning the items and include such statement as an enclosure to the report.

c. *Documentary evidence.* Documentary evidence is that taken from records, documents, letters, diaries, reports, existing statements, and other written, printed, or graphic sources by which the existence or non-existence of a fact may be indicated. This type of evidence is often the best and most persuasive evidence available. Single investigators and boards should be alert to discover all such items which may be relevant to the matter under inquiry and to attach the originals or copies thereof to the report.

d. *Testimony or statements of witnesses.*

(1) *Witnesses not suspected of misconduct or improper performance of duty.* Ordinarily, statements of witnesses will be obtained during an informal interview in which the witness relates his knowledge and it is then reduced to writing and signed; however, in the discretion of the single investigator or board, witnesses may be called and their testimony elicited by means of recorded questions and answers. If a signed statement is obtained, the single investigator or board may assist the witness in preparing his written statement to avoid excessive inclusion of irrelevant material or the omission of important facts and circumstances which are within the knowledge of the witness. However care should be taken to ensure that the statement is phrased in the actual language of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or non-existence of material fact.

(2) *Witnesses suspected of an offense, misconduct, or improper performance of duty.* In the case of a witness suspected of an offense, see Article 31(b), UCMJ. If it appears probable that a prosecution of the individual for the suspected offense may ensue, then refer to Appendix A-1-n. Ordinarily the investigator or board should collect all relevant information from all available sources other than persons suspected of offenses, misconduct, or improper performance of duty before interviewing such persons. Before interviewing a person in the Armed Forces who is suspected of misconduct or improper performance of duty, the person concerned should be advised generally of the nature of the inquiry and of the possible effect of an ultimate adverse determination. Such person should then be given an opportunity to discuss the matter with someone not acting for the Government in connection with the investigation.

(3) *Witnesses suffering from a disease or injury.* A member of the Armed Forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, shall be advised that he has a statutory right not to sign such a statement and that he therefore may not be required to do so. See section 0306 of this Manual.

(4) *Privacy Act compliance.* When an individual is requested to supply personal information, it is mandatory that there be compliance with section (e)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a) in accordance with section 0308 and Appendix A-3-a.

e. *Rules of evidence.* An informal fact-finding body is not bound by the formal rules of evidence applicable before courts-martial and may collect, consider, and include in the record any matter of reasonable believability or authenticity which is relevant to the matter under inquiry. In general, however, care should be taken to authenticate (indicate the genuineness of) real and documentary items or reproductions thereof enclosed with the report by certifications of correctness of copies or statements of authenticity, as may be appropriate. The statement of a witness should be signed by the witness or should be certified to be either an accurate summary, or the verbatim transcript, of oral statements made by him.

f. *Participation of an expert as a member.* A person possessing technical knowledge may be appointed to an informal fact-finding body either for full participation or for the limited purpose of utilizing his special experience. If appointed for this limited purpose, he need not participate in any aspect of the inquiry that does not concern his specialty. The investigative report in such cases will make clear any limited participation by a member.

g. *Classified material.* See section 0209c of this Manual.

0607 COMMUNICATIONS WITH CONVENING AUTHORITY

If at any time during the investigation it should appear, from the evidence adduced or otherwise, that circumstances exist in the light of which the convening authority might consider it advisable to enlarge, restrict, or otherwise modify the scope of the inquiry or to change in any respect any instruction provided in the appointing order, a report should be made to the convening authority. The convening authority may take such action on this report as he, in his discretion, deems appropriate.

0608 INVESTIGATIVE REPORT

a. *Form and content in general.* In all cases an investigative report shall be submitted in letter form. It shall consist of a preliminary statement, findings of fact, opinions and recommendations when so directed by the convening authority, and enclosures.

b. *Preliminary statement.* The purpose of the preliminary statement is to inform the convening and reviewing authorities that the requirements as to procurement of all reasonably available evidence and the directives of the convening authority have been met. After setting forth the nature of the investigation, it should set forth in detail the difficulities encountered in the investigation, if any; any limited participation in the investigation by a member; and any other information necessary for a complete understanding of the case. The itinerary of the investigator or board in obtaining information is not required. The preliminary statement does not obviate the necessity for findings of fact as to pertinent material matters. For example, despite expressions in both the subject and the preliminary statement that an investigation is concerned with the crash of an airplane and resulting fatal injuries to the pilot, the initial findings of fact should set forth in detail the description of the airplane, time and place of the accident, the identity of the pilot, etc.

c. *Findings of fact.* The findings of fact represent the evaluation of the evidence and information received and collected. These findings must be as specific as possible as to times, places, persons, and events. Each fact may be made a separate finding, or facts may be grouped into a narrative. It is for the fact-finding body to determine which method is the most effective in the presentation of a particular case.

d. *Opinions.* Opinions are the logical inferences or conclusions which flow from the facts. The investigation will express its opinions when directed to do so by the convening authority. For guidance as to the opinions normally required in specific situations, see chapters VIII and IX.

e. *Recommendations.* Recommendations will be made only when the convening authority has so directed in his order appointing the fact-finding body. If required, such recommendations as are specifically directed and those which appropriately flow from the findings of fact and expressed opinions shall be made. If trial by court-martial is recommended, a charge sheet, signed and sworn to by a member joining in the recommendation, shall be prepared and submitted as an enclosure to the investigative report. See paragraph 29, MCM. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter shall be prepared and forwarded as an enclosure to the investigative report; if a nonpunitive letter is recommended, a draft will be prepared and separately forwarded to the appropriate commander for issuance, but will not be included as a part of the investigative report. See Appendix A-1-a, A-1-b, and A-1-c.

f. *Enclosures.* The written appointing order, if any, will be the first enclosure. Subsequent enclosures will contain all the evidence developed by the investigation. Each statement, affidavit, transcript of testimony, photograph, map, chart, document, or other exhibit will be made a separate enclosure. The signatures of the board members to the basic report constitute authentication of all enclosures thereto; individual authentication or witnessing, however, is indicated in the situations dealt with in section 0606b, c and e.

g. *Signing and authenticating*

(1) All persons who participated in the investigation shall sign the investigative report. This includes all persons who participated in the investigation at the time of the findings, even though their participation was limited.

(2) If there are two members of an informal board of investigation and they cannot agree on findings of fact, opinions, or recommendations, the report shall be signed by the senior member. The other member shall, in a signed dissenting report, state clearly the parts of the report with which he disagrees, and his reasons therefor. If the informal board consists of three members, the majority shall provide the report of the board and the signed minority report of the dissenting member, stating his reasons for dissent, shall be included.

h. *Privacy Act compliance.* When an individual is requested by a Government representative to supply personal information, it is mandatory that there be compliance with subsection (e)(3) of the Privacy Act of 1974 (5 U.S.C.§ 552a) in accordance with section 0308 and Appendix A-3-a. The investigative report must reflect the foregoing compliance.

0609 SAMPLE REPORT

A sample informal investigative report is contained in Appendix A-6-b(1).

Chapter VIII

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a. *Extension of enlistment.* An enlisted member of the naval service who is unable to perform his duties for more than one day because of intemperate use of drugs or alcoholic liquor or because of disease or injury resulting from his misconduct is liable, after his return to duty, to serve for a period, that when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted (10 U.S.C. §972).

b. *Longevity and retirement multiplier.* Eligibility for increases in pay because of longevity and the amount of retirement pay to which a member may be entitled is dependent upon his cumulative years of "creditable service". An enlisted member who is unable to perform his duties for more than one day because of intemperate use of drugs or alcoholic liquor or because of disease or injury resulting from his misconduct is not entitled to include such periods in computing "creditable service" (paragraph 10104, Department of Defense Military Pay and Allowances Entitlements Manual–DODPM).

c. *Forfeiture of pay.* A member of the naval service on active duty who is absent from his regular duties for a continuous period of more than one day because of disease that is directly caused by and immediately follows his intemperate use of liquor or habit-forming drugs is not entitled to pay for the period of that absence. If pay is forfeited for more than one month, however, the member is entitled to $5.00 for personal expenses for each month that his pay is forfeited (10315c, DODPM). Pay is not forfeited for absence from duty caused by injuries. Pay is not forfeited for diseases not directly caused by and immediately following intemperate use of liquor or habit-forming drugs (paragraph 10315b, Department of Defense Military Pay and Allowances Entitlements Manual).

d. *Disability retirement and severance pay.* In order for members of the naval service who sustain permanent disabilities while on active duty to be eligible to receive certain retirement or severance pay benefits, the requirements of the applicable statutes must be met. One of these requirements is that the disability must not result from the member's ". . . intentional misconduct or willful neglect . . ." and must not have been "... incurred during a period of unauthorized absence." 10 U.S.C. §§1201, 1203, 1204, 1206, and 1207. Physical evaluation determinations are made independently and are not controlled by misconduct-line of duty findings or conclusions recorded under the provisions of this Manual. They are instead controlled by regulations contained in the Disability Evaluation Manual (SECNAVINST 1850.4). As a practical matter, such determinations for physical review purposes must rest upon the evidence available. Generally this will be those facts which have been officially recorded and are on file within the Department of the Navy. This would include reports and investigations submitted in accordance with the provisions of this Manual.

e. *Benefits administered by the Veterans' Administration.* In determining whether a veteran or his survivors or dependents are eligible for certain benefits, the Veterans' Administration makes its own determinations with respect to misconduct and line of duty. As a practical matter, these determinations must rest upon the evidence available and generally this will be those facts which have been officially recorded and are on file within the Department of the Navy. Statutes governing these benefits generally require that disabling injury or death be "service connected" which means that the disability was incurred or aggravated or that the death resulted from a disability incurred or aggravated "in line of duty" (38 U.S.C. §101). The statutory criteria for making such determinations are contained in 38 U.S.C. §105.

0802 WHAT CONSTITUTES LINE OF DUTY

a. *General rule.* For purposes of these regulations injury or disease incurred by naval personnel while in active service will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

(1) As a result of the member's own misconduct as determined under the regulations contained in this chapter;

(2) While avoiding duty by deserting the service;

(3) While absent without leave and such absence materially interfered with the performance of required military duties (see subsection d below);

(4) While confined under sentence of a court-martial which included an unremitted dishonorable discharge; or

(5) While confined under sentence of a civil court following conviction of an offense which is defined as a felony by the law of the jurisdiction where convicted.

b. *Active service defined.* "Active service" as used in this section includes full-time duty in the naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

c. *Presumption.* It is presumed that an injury or disease suffered by a member of the naval service was incurred in line of duty. Clear and convincing evidence is required to overcome this presumption.

d. *Unauthorized absence*

(1) Whether absence without leave materially interferes with the performance of required military duties necessarily depends upon the facts of each situation, to which must be applied a standard of reality and common sense. No definite rule can be formulated as to what constitutes "material interference." Generally speaking, absence in excess of twenty-four hours constitutes a material interference unless there is evidence to establish the contrary. Similarly, an absence of shorter duration will not be considered to be a material interference unless there is clear and convincing evidence to establish the contrary. A statement of the individual's commanding officer, division officer, or other responsible official, and any other available evidence to indicate whether an absence without leave constituted a material interference with the performance of required military duties, should be included in the record whenever appropriate.

(2) It should be noted that under 10 USC §1207 a member is ineligible for physical disability retirement or physical disability severance benefits from the Armed Forces if his disability was incurred during a period of unauthorized absence, regardless of the length of such absence and regardless of whether such absence constituted a material interference with the performance of his required military duties.

0803 WHAT CONSTITUTES MISCONDUCT

a. *Generally.* As used in this chapter misconduct is wrongful conduct. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support an opinion of misconduct it must be established by clear and convincing evidence that the injury or disease was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless disregard of the consequences. If a resulting injury or disease is such that it could have been reasonably foreseen from the course of conduct, it is said to be a "proximate result." The fact that the conduct violates a law, regulation, or order -- or the fact that the conduct is engaged in while the individual is intoxicated -- does not, of itself, constitute a basis for a determination of misconduct. Such circumstances should, however, be considered along with all other facts and circumstances in determining whether the conduct of the individual was grossly negligent and whether the incurrence of injury or disease was reasonably foreseeable as a probable result of such conduct.

b. *Presumption.* It is presumed that injury or disease suffered by a member of the naval service is not the result of his own misconduct. Clear and convincing evidence is required to overcome this presumption.

c. *Examples.* If an individual intentionally wounds himself with a firearm, the injury is due to his own misconduct. If an individual handles a firearm in a grossly negligent manner and thereby wounds himself, that too would be an injury due to his own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile which had gone out of control, the injuries would not be due to his own misconduct because they would not have been a reasonably forseeable result (proximate result) of the wrongful conduct in which the individual was engaged. In this latter example, the injuries are said to be the result of an independent intervening cause.

0804 RELATIONSHIP BETWEEN MISCONDUCT AND LINE OF DUTY

For purposes of these regulations, "misconduct" can never be "in line of duty." Hence a finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in line of duty." It is permissible, however, to find that an injury was incurred "not as a result of misconduct" and "not in line of duty." As an example, a member who is absent without authority may be injured by a felonious assault or struck by a vehicle driven by a drunken driver. Obviously the injury was incurred through no fault of the member, but if the absence materially interfered with the performance of his required military duties a finding of "not in line of duty" must result. Accordingly, the three possible combinations of findings are as follows:

a. "In line of duty" and "not due to the member's own misconduct;"

b. "Not in line of duty" and "not due to the member's own misconduct;" or

c. "Not in line of duty" and "due to the member's own misconduct."

0805 WHEN MISCONDUCT – LINE OF DUTY DETERMINATIONS REQUIRED

In each case in which a member of the naval service incurs an injury which might result in a permanent disability or which results in his physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct must be made.

0806 RESPONSIBILITY TO ORDER INVESTIGATIONS

a. *Members of the naval service.* It is the responsibility of the commanding officer or officer in charge of the individual concerned at the time of incurrence of an injury, disease, or death to convene the necessary investigation or to take other appropriate action as required by this chapter. If the command is an afloat command, the investigation of incidents occurring ashore may be conducted by another appropriate command when the afloat command so requests and certifies that conduct of the investigation by the afloat command would not be feasible. The provisions of section 0207 of this Manual should be followed if the incident to be investigated occurs at a place far removed from the location of the command which has responsibility to investigate or if the incident involves the injury or death of individuals of more than one command. When naval personnel from more than one command are injured or die in an incident which should be investigated under these regulations, a single investigation of the matter should be conducted whenever practicable. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, the area coordinator, or the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, shall resolve any issue as to the appropriate command to conduct the investigation and shall ensure that any required investigation is made. The commanding officers or officers in charge of the personnel involved shall furnish the authority coordinating the matter with the information mentioned in section 0207b of this Manual. If a member of the naval service is injured at a place distant from his command and is admitted to a naval hospital, the commanding officer of the hospital shall, if no investigation is being made of the incident, promptly report the matter to the area coordinator or designated subordinate commander who shall take action to ensure that any required investigation is made.

b. *Members of other armed services.* Whenever a member of an armed service other than the naval service is injured, dies, or incurs disease under circumstances that would warrant investigation under these regulations, and it would be appropriate for an officer in command of an activity of the Department of the Navy to convene an investigation (*e.g.*, the individual is attached to a naval activity or is being treated in a naval medical facility), the nearest command of the parent service of the individual shall be notified. If requested, an appropriate investigation under these regulations shall be convened and the report thereof forwarded in accordance with the request. No further action need be taken within the Department of the Navy.

0807 MENTAL RESPONSIBILITY

a. *General rule.* A member may not be held responsible for his acts and their forseeable consequences if, as the result of mental defect, disease, or derangement, he was unable to comprehend the nature of such acts or to control his actions. Additionally, a member may not be held responsible for his acts or their forseeable consequences if, as the result of a mental condition not amounting to a defect, disease, or derangement and not itself the result of prior misconduct, he was unable to comprehend the nature of such acts and to control his actions. Thus, an injury which was the proximate result of acts performed while the member injured was suffering impairment of his mental faculties as the result of voluntary ingestion of a hallucinogenic drug would be deemed to have been incurred as the result of the member's own misconduct. Certain properties of such drugs are notorious and their use is prohibited by article 1151, U.S. Navy Regulations; hence the impairment would support a finding of misconduct.

b. *Presumption.* In the absence of evidence to the contrary, there is a presumption that all members are mentally responsible for their acts. This presumption makes it unnecessary in the majority of cases that an administrative fact-finding body seek evidence that a member was mentally responsible at a certain time unless credible evidence is developed or discovered tending to indicate that he was not mentally responsible at that time. Such evidence may consist of circumstances attending certain acts; evidence of previous abnormal, irrational, or aberrant behavior; expert opinion evidence of mental illness; or other evidence directly or indirectly tending to indicate lack of mental responsibility. In any case in which a question of the mental responsibility of a member is raised by the facts developed or by the nature of the incident, the presumption of mental responsibility ceases to exist and the preponderance of information in the investigation must clearly and convincingly establish the member's mental responsibility before the line of duty presumption discussed in section 0802c can be overcome and thus authorize a determination that an injury or disease was incurred as a result of the member's own misconduct.

c. *Suicide attempts.* In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, is considered to create a strong inference of lack of mental responsibility. In cases of bona fide suicide attempts, therefore, further evidence must be sought on the question of mental responsibility, including, where warranted, expert psychiatric evaluation. If there is no reasonable and adequate motive for suicide supplied by the evidence, the suicide attempt will be sufficient to rebut the presumption of mental responsibility and the determination of whether the attempt was misconduct must then necessarily rest upon other evidence. Intentional self-inflicted injury, not prompted by a serious suicidal intent, is at most a suicidal gesture and such injury, unless lack of mental responsibility is otherwise shown, is deemed to be incurred as the result of the member's own misconduct.

0808 INTOXICATION AND DRUG ABUSE

a. *Intoxication.* An injury incurred as the proximate result of prior and specific voluntary intoxication is incurred as the result of misconduct. In order for intoxication alone to be the basis for a determination of misconduct respecting a related injury, there must be a clear showing that the member's physical or mental faculties were impaired due to intoxication at the time of the injury, the extent of the impairment, and that the impairment was a proximate cause of the injury. Intoxication (impairment) may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor. For a further description of drugs and drug abuse, see article 1151 of U.S. Navy Regulations.

b. *Alcohol and drug induced disease.* Inability to perform duty resulting from disease which is directly attributable to a specific, prior, proximate, and related intemperate use of alcoholic liquor or habit-forming drugs is the result of misconduct. See 37 USC 802. Habituation may or may not be associated with a specific inability to perform duty which is directly due to the specific and proximate use of alcohol or drugs, but only the period of actual inability to perform duty directly related to the specific and proximate use of alcohol or drugs may be charged as time lost due to misconduct. Time spent in evaluating habituation without specific inability to perform duty shall not be charged as time lost due to misconduct.

0809 MEDICAL AND DENTAL TREATMENT

a. *Refusal of treatment.* If a member unreasonably refuses to submit to medical, surgical, or dental treatment, any disability that proximately results from such refusal shall be deemed to have been incurred as a result of the member's own misconduct. See article 18-15, Manual of the Medical Department.

b. *Venereal disease.* Any disability resulting from venereal disease shall not support a misconduct finding if the member has complied with regulations requiring him to report and receive treatment for such disease. See article 22-18, Manual of the Medical Department.

0810 SPECIAL CONSIDERATIONS IN DEATH CASES

a. *When fact-finding body required.* A fact-finding body (either formal or informal), must be convened in the following situations:

(1) In any case in which the death of a member of the naval service occurred other than from natural causes, and particularly all apparent suicides (see paragraph 6-107b, OPNAVINST 5510.1E)(for deaths resulting from aircraft accidents, see section 0902);

(2) In any case in which civilians or other non-naval personnel are found dead on a naval installation under peculiar or doubtful circumstances unless the incident is one over which the Naval Investigative Service has exclusive jurisdiction. (See section 0212 of this Manual; SECNAVINST 5520.3 series; and paragraph 6-110, OPNAVINST 5510.1E (Security Manual)).

b. *Findings concerning misconduct and line of duty prohibited.* While it is important that all significant and relevant facts be recorded in a timely manner in any of the situations described in subsection a above, it should be noted that no survivor's benefit statute administered by the Department of the Navy is conditioned upon a misconduct-line of duty finding. To express recommendations or findings concerning misconduct or line of duty in death cases serves no useful purpose and such expressions are not desired by the Veterans' Administration, which makes its own findings. Accordingly, fact-finding bodies will express no opinion concerning misconduct or line of duty in death cases. Nor shall the convening authority or reviewing authorities enter any finding in this regard. If such a recommendation and/or finding has been recorded inadvertently or recorded after the injury but before death occurred, the record need not be returned for correction. Reviewing authorities should note the error and indicate its lack of validity in the forwarding endorsement. In any death case in which the record contains an adverse finding or opinion with respect to line of duty or misconduct, it is proper for reviewing authorities to comment and/or to enclose additional data which may tend to counter such finding or opinion.

c. *Death as a result of enemy action.* No report to the Judge Advocate General is required in the case of a death occurring as a result of enemy action. However, a fact-finding body should be convened, and the record forwarded in any case in which peculiar or doubtful circumstances are involved. Because a number of commercial life insurance policies contain certain restrictions and/or certain types of double indemnity provisions, it is desirable to ensure that the essential facts are recorded while witnesses are known and available. To the extent feasible, the facts reported should permit determinations as to whether death resulted from accidental causes, natural causes, or enemy action.

d. *Inquest duties.* A fact-finding body ordered to investigate the death of a member of the naval service, or of any person found dead on a naval installation, shall perform the duties of an inquest if the death was suffered under peculiar or doubtful circumstances. After convening, the fact-finding body will proceed at the first available opportunity to the place where the body may be, carefully identify it, and note the surroundings, if pertinent. Release of the remains of deceased personnel is to be expedited in all cases. Such medical witnesses as may be available shall be interviewed or their official reports obtained, including, whenever possible, evidence from the doctor who performed the autopsy if one was made, or a doctor who assisted or witnessed such autopsy. The fact-finding body will ascertain from these medical witnesses the exact condition of the body and the medical opinion as to the cause of death. The date of death shall be stated as a fact or as an opinion with the time of death fixed as precisely as the evidence permits. Copies of the autopsy protocol and the death certificate shall be appended as enclosures to the record.

e. *Autopsies.* When death of a member of the uniformed services on active duty or active duty for training occurs under any of the circumstances set forth in article 17-18, Manual of the Medical Department and when an autopsy is authorized by the commanding officer upon advice of the fact-finding body or medical officer, and in other cases in which authorization from proper authority has been obtained, the appointed fact-finding body shall provide the medical officer designated to conduct the autopsy with a detailed preliminary report of circumstances surrounding the death. In those cases in which authorization for autopsy has been granted by other than the commanding officer, the medical officer shall be responsible for advising command authority that such authorization has been granted so as to facilitate the preliminary investigation and report thereof to the medical officer conducting the autopsy. Upon completion of the autopsy, the medical officer conducting the autopsy shall provide the fact-finding body with a copy of the preliminary autopsy findings as to the cause of death and, when completed, a copy of the final protocol. The fact-finding body shall provide the medical officer conducting the autopsy with a copy of the final investigative report. (See Appendix A-8-a which quotes article 17-18, Manual of the Medical Department).

f. *Letter reports.* In those death cases in which the appointment of a fact-finding body is not required by subsection a above, and yet it is considered that a record of the circumstances involved be maintained in the Office of the Judge Advocate General, a letter report may be used. An example of a letter report in a death case is contained in Appendices A-8-b(1) and A-8-b(2).

0811 WHEN CLAIMS OR OTHER MATTERS ARE INVOLVED

a. *Examination of reports.* Any report of injury of death should be carefully examined to see if potential claims by or against the Government may be involved. This is of special concern where medical care has been furnished and the Government may be entitled to recover third party medical claims. See chapter XXIV of this Manual concerning the requirements for processing such claims.

b. *Combining investigations.* There is no prohibition against combining misconduct-line of duty investigations with claims investigations. Facts elicited in a claims investigation may be sufficient and may be used as a basis for entering line of duty and not misconduct findings in the health record as authorized by section 0814b or in making the abbreviated reports as authorized by section 0814c.

c. *Forwarding advance copies.* Where investigations have been combined (or directed to fulfill more than one function) and there is need for retaining the original record at the command or reviewing level for such purposes as courts-martial, contractual disputes, claims, litigation, etc., the retaining command shall ensure that a legible advance copy with all enclosures is forwarded to the Judge Advocate General.

0812 SPECIAL CONSIDERATIONS PERTAINING TO RESERVISTS

See section 0911 of this Manual.

0813 RELATIONSHIP TO DISCIPLINARY ACTION

An adverse determination as to misconduct or line of duty is not a punitive measure. Disciplinary action, if warranted, shall be taken independently of any such determination. Similarly, a favorable determination as to misconduct and line of duty does not

preclude separate disciplinary action nor is such a favorable determination in any way relevant or binding on the issue of guilt or innocence of the member in a separate disciplinary proceeding. The loss of rights or benefits resulting from adverse determinations as to misconduct and line of duty may be relevant and, at the request of the accused, may be admissible as matters in extenuation and mitigation in a disciplinary proceeding.

0814 HOW FINDINGS ARE TO BE RECORDED IN INJURY CASES

a. *JAG Manual investigations.* A fact-finding body (either formal or informal) must be convened and the commanding officer must make findings concerning misconduct and line of duty in any case in which:

(1) The injury was incurred under circumstances which suggest that a finding of "misconduct" might result;

(2) The injury was incurred under circumstances which suggest that a finding of "not in line of duty" might result;

(3) There is a reasonable chance of permanent disability being involved and the commanding officer considers that the appointment of a fact-finding body is the appropriate means by which to ensure that an adequate official record is made concerning the circumstances surrounding the incident;

(4) The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers that the appointment of a fact-finding body is the appropriate means by which to ensure that an adequate official record is made concerning the circumstances surrounding the incident.

b. *Entry in health or dental record.* No fact-finding body need be convened and no report need be forwarded to the Judge Advocate General concerning misconduct and line of duty when:

(1) In the opinion of the medical officer (or representative of a medical department) as concurred in by the commanding officer, the injury is not likely to result in a permanent disability and was incurred "in line of duty" and "not as a result of the member's own misconduct";

(2) Appropriate entries to this effect have been made in the service member's health or dental record (see article 16-45 and 16-71, Manual of the Medical Department).

NOTE: In any case a summary report may be made to the Judge Advocate General in accordance with subsection c below if there appears to be any reason for maintaining a record in that office.

c. *Use of forms or letter reports*

(1) An injury report form and/or letter report (RCS JAG 5800-19) may be used in any case in which "line of duty" and "misconduct" findings are required by section 0805, and in which all of the following conditions are met:

(a) In the opinion of the medical officer (or representative of a medical department), concurred in by the commanding officer, the injury was incurred "in line of duty" and "not as a result of the member's own misconduct";

(b) A fact-finding body is not required under section 0814a and is not otherwise contemplated; and

(c) The reporting requirements of the Judge Advocate General are not fully satisfied by a health or dental record entry under section 0814b—for example, a health or dental record entry will not suffice where a permanent disability may be involved.

(2) Reports may be made to the Judge Advocate General using NAVJAG Form 5800/15 without a covering letter. See Appendix A-8-c which contains such a form completed for this purpose.

(3) Any accident reporting form including the Marine Corps Accident and Injury Report (NAVMC 10767) may be used in reporting injuries resulting from motor vehicle accidents. These forms must be forwarded with a letter report which includes the following information if it is not otherwise contained on the form:

(a) A specific statement that the injury was incurred "in line of duty" and "not as a result of the member's own misconduct";

(b) Name, rank or rate, and serial number of the medical officer or medical department representative who concurred in the line of duty findings;

(c) A statement as to the nature and extent of any injury and what, if any, permanent disability may be involved. See Section 0308 for advice required to be given by the Privacy Act.

d. *Example of the use of forms.* Appendix A-8-d and A-8-e demonstrate how to use Marine Corps Form NAVMC 10767 with an accompanying supplemental letter report.

e. *Action by officer exercising general court-martial jurisdiction.* The form or letter report which is directed to the Judge Advocate General under this section shall be forwarded via an officer exercising general court-martial jurisdiction, who will cause it to be examined by a judge advocate. Examples of recommendations of examining judge advocates are set forth in Appendix A-8f.

0815 MISCONDUCT AND LINE OF DUTY HEARINGS

a. *Action by convening authority.* In each case in which a member of the naval service has incurred an injury or contracted a disease and the circumstances are such that investigation by a fact-finding body was required and conducted under sections 0810a or 0814a, the convening authority of the fact-finding body, unless he returns the record or report for further inquiry, shall take one of the following actions:

(1) If a fact-finding body was directed to, and did inquire into, the circumstances surrounding the incurrence of an injury or the contraction of a disease, and the convening authority concludes that such injury or disease was incurred "in line of duty" and "not due to the member's own misconduct" (or that clear and convincing evidence is not available to rebut the presumption of line of duty and not misconduct), he shall express this conclusion in his action on the record of proceedings. This action may be taken regardless of whether it differs from or concurs with an opinion expressed by the fact-finding body.

(2) If the member involved was designated a party before a formal fact-finding body and was fully accorded his rights as such, and if the fact-finding body was directed to, and did inquire into, the circumstances surrounding the incurrence of an injury or the contraction of a disease, the convening authority shall express his conclusions concerning misconduct and line of duty in his action on the record of proceedings. Any of the permissible findings described in section 0804 may be made regardless of whether they differ from or concur with opinions expressed by the fact-finding body.

(3) If the member was not designated a party before the fact-finding body, or if having been so designated, he was not fully accorded his rights as such, and if, upon review of the record or report of the fact-finding body, the convening (or higher) authority has substantial doubt that the injury or disease of the member was incurred in line of duty, he shall afford the member a hearing or shall forward the record or report to the command to which the member is attached so that a hearing may be afforded. The hearing in such a case shall include the following elemental requirements:

(a) The member shall be advised that questions have arisen concerning the circumstances under which he incurred an injury or disease and that line of duty and misconduct determinations must be made;

(b) If the member is suspected of having committed an offense, he shall be so advised as required by Article 31(b) UCMJ;

(c) The member shall be advised that he has the right not to give information regarding the origin,

incurrence, or aggravation of an injury or disease that the member may have. See section 0306.

(d) Any statement, record, or other evidentiary matter considered by the convening authority shall be made available for inspection by the member;

(e) The member shall be given full opportunity to present any relevant matter in refutation, explanation, rebuttal, or otherwise respecting the incurrence of the injury or disease. A reasonable period of time shall be provided to the member for this purpose.

(f) The member shall be provided a Privacy Act statement in accordance with section 0308 and Appendix A-3-a.

b. *Action by officer exercising general court-martial jurisdiction.* Unless the convening authority is empowered to convene general courts-martial, the record or report shall be forwarded to an officer empowered to convene general courts-martial having a judge advocate attached to his command. This officer may take any action on the report that could have been taken by the convening authority. With respect to conclusions concerning misconduct and line of duty, he shall indicate his approval, disapproval, or modification of such conclusions unless he returns the record for further inquiry. See section 0210 of this Manual. A copy of this action shall be forwarded to the commanding officer of the member concerned so that appropriate entries may be made in his service and medical records. Reviewing authorities subsequent to the officer exercising general court-martial jurisdiction need neither comment nor record approval or disapproval of the prior actions concerning line of duty and misconduct.

0816 RELATION TO SAFETY INVESTIGATIONS

Safety investigations and reports required by OPNAVINST 5102.1 are separate and independent of investigations and reports under the JAG Manual.

0817 CHECK LIST FOR FACT-FINDING BODIES

The following is provided as a convenient check list of matters which should be included (as applicable) in any report of a fact-finding body appointed to inquire into and make recommendations concerning misconduct and line of duty under the provisions of this chapter.

a. The complete name, grade or title, service or social security number, service or occupation, station or residence of all persons, military and civilian, killed or injured as an incident of the event under investigation. See section 0308 for advice required to be given by the Privacy Act.

b. All facts leading up to and connected with an injury, disease, or death.

c. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquests or medical examiners' reports, and pathological, histological, and toxicological studies.

d. Complete information concerning the site and terrain at which the incident in question occurred; and photographs, maps, charts, diagrams, or other exhibits which may be deemed helpful to a complete understanding of the incident.

e. All pertinent facts with respect to the duty, leave, liberty or unauthorized absence status of an individual at the time of the incident resulting in his injury or death.

f. When the person involved is a member of a reserve component of the Navy or Marine Corps, complete information as to his status in relation to extended active duty, active duty for training, or inactive duty training (or travel to and from such duty) at the time of the incident.

g. Complete information as to the nature and extent of all injuries to naval personnel and the place and extent of any hospitalization resulting therefrom. Include costs when civilian facilities are used.

h. When relevant, evidence regarding the state of alcohol, drug, or fumes, gas, or vapor intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident. Evidence as to the individual's general appearance and behavior, his rationality of speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be obtained and recorded. Efforts shall be made to determine the quantity and nature of the intoxicating agent used and the period of time over which used by the person. Results of any blood, breath, urine, or tissue tests for the intoxicating agent should also be obtained and submitted as exhibits.

i. When material, evidence regarding the mental competence or impairment of the deceased or injured person. In all cases of suicide or attempted suicide, all possible evidence bearing on the mental condition of the deceased or injured person shall be obtained. This will include all available evidence as to his social background, his actions and moods immediately prior to the suicide or the suicide attempt, any troubles which might have motivated the incident, and any pertinent examination or counseling by specially experienced persons.

j. Documentation evidencing that each enclosure containing personal information solicited from an individual is in compliance with the Privacy Act of 1974. See section 0308 and Appendix A-3-a.

k. Documentation that statements solicited from an injured service member respecting the incurrence or aggravation of his disease or injury are in compliance with section 0306.

Chapter IX

INVESTIGATIONS OF SPECIFIC TYPES OF INCIDENTS

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0901 DATA REQUIRED IN EACH JAG MANUAL INVESTIGATION

a. *General.* By whatever method evidence is obtained, the JAG Manual investigation is required to ascertain dates, places, persons, and events definitely and accurately. The day, month, year, and when pertinent, the time, of the incident or circumstances in question should be designated with particularity. The place or places involved should be specifically reported, and all persons involved should be specifically reported, and all persons involved should be properly identified by full name, title, business or profession, and residence, if a civilian; or full name, grade, service, duty station, and service number, if a member of the Armed Forces.

b. *Omissions.* Failure to observe these simple rules often results in the submission of an incomplete word picture of the transaction or event being investigated and frequently necessitates return of the record for further investigation.

c. *Aids.* Diagrams, charts, and maps should be included in the investigative record when such representations are deemed essential to provide the reviewing authorities with an accurate understanding of the incident or transaction being investigated. Photographs should be taken for inclusion in those cases in which word expression is deemed insufficient to illuminate the circumstances and/or the damage attending the event in question. Illustrations depicting the nature of the roadway or other site of an incident may be helpful to an understanding of the case.

d. *Factual basis.* All findings of fact should be supported by evidentiary enclosures, written statements by the investigating officer describing matters personally observed and learned by the investigating officer, are convenient means to document facts and, when appropriate, shall be made enclosures.

e. *Privacy Act compliance.* The JAG Manual investigation must be conducted in compliance with the Privacy Act of 1974, and the JAG Manual investigative record must demonstrate the compliance. See section 0308 and Appendix A-3-a.

0902 AIRCRAFT ACCIDENTS

a. *General*

(1) Aircraft accidents and other mishaps of various degrees of severity are investigated by one or more investigating bodies for various specific purposes in accordance with existing instructions and in fulfillment of legal requirements or inherent responsibilities of command and management.

(2) For the sole purpose of safety and accident prevention, the Chief of Naval Operations issues special instructions (OPNAVINST 3750.6 series) for the conduct, analysis, and review of investigations of aircraft mishaps. To avoid confusion with others, those investigations are known as Aircraft Accident Reports (AAR) and Aircraft Mishap Investigations.

(3) In every instance in which an aircraft mishap results in death or serious injury; extensive damage to Government property; or in which there is a possibility of a claim, either by or against the Government, an appropriate fact-finding body shall be ordered to determine the cause and responsibility for the mishap, the nature and extent of any injuries, a description of all damage to property, and all other attendant circumstances. Such fact-finding body may also be convened to inquire into and report on any other mishap, near mishap, or circumstance whenever, in the discretion of the commanding officer or superior authority, it appears that such fact-finding body will provide information which may be required by, or be of interest to, the Department of the Navy. The fact-finding bodies and their activities dealt with in this subsection are referred to as *JAG Manual investigations* and are in addition to and separate from the aircraft accident safety investigations identified in subsection (2) above.

(4) A JAG Manual investigation is not required for aircraft accidents or other aircraft mishaps incident to direct enemy action. An aircraft accident or aircraft mishap is incident to direct enemy action when it is due to hostile action or to a cause unknown in a hostile area. The foregoing does not dispense with the requirement of a JAG Manual investigation solely because an aircraft accident or

other aircraft mishap occurs in the course of a combat operation, such as an aircraft crash when taking off or returning to an airfield or aircraft carrier not caused by hostile forces. Further, a JAG Manual investigation is not precluded when deemed appropriate by operational or administrative commanders; nor does the foregoing affect the inherent right of such commanders to investigate in order to gather, evaluate, or verify the facts of a combat engagement when enemy action has resulted in the loss of, or damage to, a naval aircraft. This subsection relates to JAG Manual investigations only and does not affect any other reporting requirement, such as reports required under articles 0739 and 0743, U.S. Navy Regulations, 1973. See also section 0203d of this Manual.

b. *Relationship to aircraft accident safety investigations*

(1) A JAG Manual investigation of an aircraft accident or mishap is an "other" investigation as referred to in the Joint Directive issued under the OPNAVINST 3750.16 series in implementation of section 702 of the Federal Aviation Act of 1958 49 USC 1442. This directive clearly distinguishes between aircraft accident safety investigations and "other" investigations; stipulates that they shall be conducted separately and independently; and specifies certain limitations and restrictions affecting "other" investigations with respect to persons involved in safety investigations, evidence obtained thereby, and the report thereof.

(2) Although membership on an aircraft safety investigation board cannot *per se* bar an individual from appearing as a witness before a JAG Manual investigation of the same incident, such appearance is manifestly undesirable and should be avoided if possible. If such appearance is essential, see OPNAVINST 3750.16 series.

(3) While the aircraft safety investigation and the JAG Manual investigation must be conducted separately and independently, each shall have access to all real evidence and shall have separate opportunities to question and to obtain statements from all witnesses.

(4) In conducting the JAG Manual investigation care shall be exercised to respect the privileged character of the aircraft safety investigation. No witness shall be questioned as to whether he has participated in, or testified before, any aircraft safety investigation.

(5) In any case in which there is a possibility that the witness will be called upon to testify before both types of investigatory bodies it is imperative that an explanation be made with respect to the apparent duplication. This is particularly important with respect to the non-military witnesses. The explanation should include the following:

a. The differing objectives of the two investigations;

b. Why the procedures vary;

c. The necessity for preserving the privileged character of the aircraft safety investigation;

d. That since neither command nor administrative action may alter the privileged character of statements given to the aircraft safety investigation such statements will not be available to the JAG Manual investigation from any official source.

c. *Data required.* The scope and details of the fact-finding function to be performed pursuant to this section will vary according to the nature and circumstances of the particular incident in question. The report of the fact-finding body should include, but not be limited to, data on the following matters, insofar as the items are pertinent to the occurrence under investigation:

(1) The background, history, training, and experience of the pilot, as well as his degree of familiarity with the type of aircraft involved.

(2) The sociological, psychological, and human factors related to the accident.

(3) The type, duration, and purpose of the flight; the authorization for the flight; the briefing of

the pilot; and any other pertinent information in regard to the particular flight.

(4) The prevailing weather conditions which might have affected the flight.

(5) The preflight history of the aircraft; compliance or non-compliance with pertinent technical directives, including flight hours since the last overhaul; discrepancies noted on recent "yellow sheets" (OPNAV Form 3760/2; OPNAVINST 3710.7 series); VIDS/MAF forms; OPNAVINST 4790.2 series; and flight hours since the last intermediate check.

(6) Type, model, and bureau number of aircraft involved.

(7) A description of flight path and maneuvers of the aircraft during flight, including manner of descent and impact.

(8) The positions of external control surfaces, landing gear, canopy, etc., during the flight.

(9) The presence, condition, and use of safety, communication, escape, and survival equipment.

(10) A post-accident examination of the aircraft and a detailed description of all damage to the aircraft, including wreckage diagrams, disassembly and inspection reports, wreckage photographs, and data on engine, fuselage, and control surfaces.

(11) An examination of the scene of the accident with complete information as to its precise location and a detailed description of the extent of any damage to Government or private property.

(12) A description of rescue operations employed.

(13) Instructions in effect at the time of the accident concerning procedures relating to the particular flight (including applicable local and regional flight rules governing the flight).

(14) The status of all personnel aboard, i.e., whether pilot, co-pilot, member of the crew, or passenger.

(15) Performance data on aircraft in question under prevailing wind, weather, and temperature conditions.

(16) All deaths resulting from the accident and the precise medical cause thereof (substantiated by medical records, autopsy, and death certificate).

(17) The cause, nature, and extent of any injuries suffered as a result of the accident (substantiated by medical records), including misconduct-line of duty determinations in the case of injuries to naval personnel, if directed.

(18) The role of other aircraft in the occurrence.

(19) The roles of supervisory, support, and controlling personnel.

d. *Other Federal agency participation.* Participation of National Transportation Safety Board (NTSB) or the Federal Aviation Agency (FAA) is covered by OPNAVINST 3750.16 series.

0903 VEHICLE ACCIDENTS

a. *Basic matters.* If the subject matter of the investigation involves any motor vehicle accident, the following facts are important and should be covered in the fact-finding report, if applicable:

(1) Speed of vehicles involved as evidenced by testimony of witnesses, skid marks, condition of roads, and the damage to the vehicles.

(2) Road factors, including all road characteristics, natural obstructions to the driver's vision, and traffic signs.

(3) Other vehicles, including any part played by them in creating the conditions that resulted in the accident.

(4) Traffic conditions at the scene of the accident and their effect on the accident.

(5) Traffic laws and regulations in force pertinent to the accident, including required safety devices.

(6) Light and weather conditions and their effect on driving conditions.

(7) Mechanical condition of the vehicles involved.

(8) Physical condition of the driver, or drivers including sobriety, fatigue and exhaustion, and the effect of their physical condition on the accident.

(9) Driving experience of the driver or drivers.

(10) Safety devices installed and whether they were being used at the time of the accident.

b. *Passengers.* The following information should be provided with respect to passengers:

(1) Conduct of passengers and the effect thereof on the driver.

(2) Prior relationship of passengers and driver which is relevant to knowledge by any passenger of any impairment of the driver (which may have caused the accident) at the time the passenger entered or had a reasonable opportunity to leave the vehicle.

(3) Safety devices installed and whether they were being used at the time of the accident.

0904 EXPLOSIONS

a. *General.* The report of the fact-finding body should cover the cause and responsibility for the explosion, the extent of injuries to personnel, the damage to property and probable monetary amount thereof, and all other relevant circumstances.

b. *Specific facts.* The following information should be included in the record, if applicable.

(1) Date, time of day, place, and probable causes.

(2) Kind of explosives or ammunition and the quantity involved.

(3) Time intervals, if measurable, between explosions.

(4) Existence of barricades and effect upon them; the existence of any hill, forest, or other object intervening between the site of the explosion and the areas affected.

(5) Weather and atmospheric conditions and their effect on shock waves.

(6) Range and extent of damage. Where feasible, maps or photographs should be included, upon which all or most of the following data may be shown:

(a) Radius of complete destruction.

(b) Radius of structural damage beyond economical repair.

(c) Radius of repairable structural damage.

(d) Radius of general glass breakage.

(e) Distances to which significant missiles were projected (include kind and weight).

(f) Distance between locations, if explosions occurred at more than one location.

(g) Distance between ships and other vessels or structures affected and distances to nearby ships or structures not affected.

(7) Approximate shape and dimensions of crater, including depth and kind.

(8) Personnel involved and the extent of their involvement.

(9) If claims are involved, see applicable chapters XII and XX through XXIV.

0905 LOSS OR STRANDING OF A SHIP OF THE NAVY

a. *General.* The evidence from which the findings of fact are derived should include all pertinent logs, charts, orders, and regulations. The condition of the sea and weather, the rate and direction of the tidal stream, the time of the tide, and other factors involving natural elements should be stated. Any mechanical or electronic deficiency or failure in the ship pertinent to the loss or stranding should be investigated and reported. The primary objects of the investigation should be to ascertain the cause and individual responsibility for the loss or stranding and the damage resulting therefrom. See section 0907b concerning loss or stranding as a result of enemy action.

b. *Determination of ship's position.* Investigation should be made as to whether the proper chart provided by the Department of the Navy was used, whether the position of the ship at the last favorable opportunity was accurately determined and, if not, when it was last accurately ascertained. In appropriate cases, a competent officer, not attached to the ship involved and not a member of the fact-finding body, should be directed to work up the reckoning of the ship from the data available to enable the investigative body to fix the true position of the ship at the time of her taking the ground. The officer appointed to perform this duty should be called as a witness and, upon the offering of his written work in evidence, be subject to cross-examination as to the accuracy thereof. The track of the ship so determined, as well as her position when aground, as determined by cross-bearings taken from the log book or by other means, should be laid off on the chart by which she was navigated.

c. *Navigation in pilot waters.* If land was sighted and the distance estimated before the ship struck, it should be ascertained what steps were taken during the time land was in sight to correct the ship's course and speed. The extent to which applicable instructions (e.g., those contained in Coast Pilot or Sailing Directions) were observed should be particularly noted.

d. *Procedure in case of loss of a ship.* Whenever inquiry is made into the loss of a ship, the investigative body should call for the official report of the commanding officer of such ship containing the narrative of the disaster. This report should be read to the investigating body in the presence of the commanding officer and of such of the surviving officers and crew as can be assembled and should be appended to the record or report of investigation.

0906 COLLISIONS

a. *General.* In the event of a collision involving a naval vessel or damage caused by a naval vessel to any shore structure, fish net or trap, buoy, or similar foreign object which results in property damage or personal injury, the appropriate officer in command should ensure that a fact-finding body is ordered to determine the responsibility for the accident, the extent of injuries to personnel, the damage and probable cost thereof, and other attendant circumstances. The record of a fact-finding body appointed to investigate a collision should contain the name, grade, class of service, permanent home address, length of service, and marine experience of each material witness to the collision. See section 1207e with respect to the possible use of a letter report in minor cases which are of interest only from an admiralty claim standpoint.

b. *Collision with vessels or damage caused by naval vessels to property other than that of the U.S. Navy.* The appropriate officer in command should, in addition to complying with the admiralty claims procedure (chapter XII), ensure that an appropriate fact-finding body is ordered to investigate the incident. No officer, pilot, or agent of a non-Navy vessel involved in a collision with a naval vessel shall be designated a party or accorded the rights of a party without the concurrence of the Secretary of the Navy (JAG). Such person may be afforded an opportunity to appear and give evidence as a witness, and while testifying he may be represented by counsel. Neither the witness nor his counsel has a right to be present when other witnesses testify. The non-Navy witness or his counsel may be furnished only with a copy of that portion of the record containing his testimony and any other matter derived solely from such testimony. Ordinarily, the proceedings of the fact-finding body ordered to investigate the incidents described in the heading of this subsection should be in closed session in order to safeguard the interests of the Government. See section 1207e with respect to the possible use of a letter report in minor cases which are of interest only from an admiralty claim standpoint.

c. *Damage to Navy vessels or property caused by non-Navy vessels.* Incidents involving damage to Navy vessels or property caused by non-Navy vessels or floating objects should be investigated in accordance with subsections a and b above.

d. *Other sources of guidance.* See (Admiralty Claims), chapter XII.

0907 ACCIDENTAL OR INTENTIONAL FLOODING OF A SHIP

a. *Scope of investigation.* In cases of grounding, collision, or structural or material failure which involve accidental or intentional flooding of parts of a naval ship, the report of the fact-finding body should contain the following information:

(1) Draft forward and aft and list of ship before and after damage. These drafts may have to be estimated from drafts recorded on departure from last port and on arrival in port after damage.

(2) General distribution and amounts of variable weights, particularly fuel and water, before damage.

(3) Compartments flooded and the rapidity of flooding of individual compartments, if available.

(4) Cause of flooding of each compartment; that is, whether the flooding was due directly to damage to structure or due to deficiencies of structure or closures such as doors, hatches, valves, vent closures, etc.

(5) The material condition of readiness in effect at the time of the casualty.

(6) Summary of steps taken to control damage and to correct list or trim.

(7) Performance of installations, such as flood control, automatic door and hatch closures, etc.

(8) Extent of damage (hull, machinery, electronics supplies, cargo, etc.) including description and value thereof.

b. *Enemy action.* A JAG Manual investigation is not required for loss, damage, or flooding of a naval vessel or craft as a direct result of enemy action. The loss, damage, or flooding of a naval vessel or craft is a direct result of enemy action when it is due to hostile action or to an unknown cause in a hostile area. The foregoing does not dispense with the requirement of a JAG Manual investigation solely because the loss, damage, or flooding occurs in the course of combat operation, such as a collision when leaving port or returning not caused by hostile forces. Further, a JAG Manual investigation is not precluded when deemed appropriate by operational or administrative commanders; nor does the foregoing affect the inherent right of such commanders to investigate in order to gather, evaluate, or verify the facts of a combat engagement when enemy action has resulted in loss, damage, or flooding of a naval vessel or craft. This subsection relates to JAG Manual investigations only and does not affect any other reporting requirement, such as reports required under articles 0739 and 0743, U.S. Navy Regulations, 1973. See also section 0203d of this Manual.

0908 PRETRIAL INVESTIGATION

a. *Investigation of charges.* If practicable, when a court of inquiry or formal fact-finding body is convened to investigate an incident which is likely to result in general court-martial charges, it should be provided with sworn charges and directed to investigate the charges in accordance with Article 32, UCMJ and paragraph 34, MCM.

b. *Investigation prior to charges.* If a JAG Manual investigation of the subject matter of an offense was conducted before the accused was charged with the offense, the investigation may be used in lieu of an investigation of the charges under Article 32, UCMJ providing:

(1) The accused was present at such investigation and was:

(a) advised of the offense of which suspected and of his right to be represented by counsel (see section 0304b) at the investigation;

(b) informed of his rights under Article 31, UCMJ;

(c) given full opportunity to cross-examine witnesses against him if they were available; and

(d) given full opportunity to present anything he desired in his own behalf, either in defense or mitigation;

(2) All statements of witnesses were given under oath or affirmation unless such requirement was waived by the accused; and

(3) The accused, after being informed of the formal charge against him, did not demand further investigation of the charges. In the event of such demand, opportunity shall be given to the accused to recall witnesses for further cross-examination and to offer any other evidence in his behalf. See paragraph 33e(1), MCM. This may be done by additional proceedings of the court of inquiry or formal investigation, or by referring the case to a single investigating officer to hear and record such

additional evidence, except that a member of a court of inquiry, a board, or a single investigating officer who previously recommended disciplinary action or who has become an accuser may not conduct the additional proceedings. The proceedings of such further investigation shall be appended to, and made a part of the original record of the initial court of inquiry or formal investigation.

0909 LOSS OF GOVERNMENT FUNDS OR PROPERTY

a. *General.* Except where adjustments in accounting are authorized for resolving irregularities in accounts (see subsection b, below), article 0719, U.S. Navy Regulations, 1973, requires commanding officers to convene or recommend the convening of JAG Manual investigations to inquire into the circumstances of all losses or deficits of government funds or property in the custody of persons under their command, irrespective of whether the custodians are in accountable positions (as defined in paragraphs 041501, 041502, and 041503, Navy Comptroller Manual) or have executed accountability receipts for specific funds or property. Additionally, a JAG Manual investigation may be a prerequisite under section 0145 of this Manual to setting off indebtedness of a non-accountable person for loss, damage, or destruction of government funds or property. Examples of instances in which JAG Manual investigations are required, regardless of any other factors, are disbursing deficits of $250 or more, disproportionate ship's store losses, and any losses in which theft or embezzlement by responsible custodians is indicated. Where appropriate for verifying the actual existence of an apparent loss or deficit, a prompt audit should normally precede the decision to convene a JAG Manual investigation. In selecting the type of investigation to be convened in a case of loss of funds or property (*e.g.*, formal or informal fact-finding body), the factors specified in section 0205 of this Manual should be carefully considered in the light of possible adverse financial and career impacts on individuals who may be affected. Coordination with concurrent investigations by other federal or departmental agencies is required, where applicable, under sections 0203 and 0212 of this Manual.

b. *JAG Manual investigation not required.* In the absence of probable indications that a particular loss or deficit of funds or property was caused by theft or fraud on the part of any person, or by fault or negligence on the part of a person designated as accountable for the funds or property, JAG Manual investigations are not required to be convened in the following cases:

(1) Physical losses or deficits of disbursing funds less than $250 which are immediately liquidated pursuant to paragraph 041380. 2b, Navy Comptroller Manual:

(2) Physical losses or deficits of disbursing funds less than $250 which are not liquidated, but for which adjustments in accounting are authorized under paragraph 041380.2C, Navy Comptroller Manual; and

(3) Retail shortages or differences that are not considered to be disproportionate under the following directives, as applicable, which authorize adjustments in accounting:

(a) NAVSUP Publication 487, paragraph 1499 (Ships' Stores);

(b) Navy Supply Systems Command Manual, paragraphs 42236 and 43550;

(c) NAVSUP Publication 486, paragraph 6251 (Food Service);

(d) Marine Corps Order P4400. 19B;

(e) Marine Corps Order P4400.15H; and

(f) Marine Corps Order P4400.124C.

c. *Special advisement for individuals affected.* In any case where a JAG Manual investigation is convened in connection with a loss of funds or property in the custody of an accountable individual or for the purpose of making an administrative determination under section 0145b of this Manual, the accountable individual, or other individual affected, shall be advised (in addition to his rights of a party in accordance with section 0304 in a case of a formal fact-finding body and such advisements as may be required under the Privacy Act of 1974 and Article 31, UCMJ) that:

(1) The scope of the investigation extends to all facts relevant to the loss, its causes, its dollar

value, and kinds and degrees of individual responsibility therefore;

(2) The findings of the investigation may constitute a basis for taking any of the actions indicated below, as appropriate;

(a) If the loss is of property or funds derived from the sale of property, the investigation may lead to a determination by the Deputy Chief of Staff for Installations and Logistics, U.S. Marine Corps; the Chief, Bureau of Medicine and Surgery; or the Commander, Naval Supply Systems Command, as appropriate, as to the financial liability of the accountable individual for the loss pursuant to the provisions of 31 U.S.C. § § 89-92;

(b) If the loss is of disbursing funds or documents, or of other funds in the custody of an accountable individual, except funds described in the preceding subsection, the investigation may lead to a determination by the Secretary of the Navy or his designee, or by the General Accounting Office, as to whether relief from financial liability will be granted in the event that the accountable individual submits a request for relief under the provisions of 31 U.S.C. § 95a, § 82a-1, or § 82a-2;

(c) If the loss resulted from an unlawful act by a nonaccountable individual, a determination may be made by the individual's commanding officer as to whether to hold the individual financially liable for the loss under section 0145 of this Manual;

(3) The investigation provides the accountable individual an opportunity to be heard; and

(4) The individual may voluntarily relieve himself of financial responsibility for the loss by payment of its dollar value.

d. *Investigative report*. In addition to any other relevant findings, opinions, and recommendations as may be directed by the order appointing the fact-finding body, the investigative report must include, at the minimum, the following items:

(1) A determination of the exact amount of the loss and its precise nature (*i.e.*, whether it was a physical loss or deficiency of government funds, vouchers, records, checks, securities, or papers; an illegal, improper, or incorrect payment; or a loss of property, funds derived from the sale of property, or shortage of inventory).

(2) The identity and position of the accountable officer (*e.g.*, disbursing, supply, ship's store, food services, or commissary store officer), and the identity and position of any other person who had custody of the missing funds, records, or property in question;

(3) The general reputation of the individuals identified in item (2) above for the handling and safeguarding of the funds, records, or property entrusted to them;

(4) Any local condition which was unusual, which required special care, or which involved an exceptional hazard in handling funds or property;

(5) The physical conditions under which the accountable officer operated, including the allocation and condition of space and equipment, as well as the storage and security facilities and services available to him;

(6) Whether or not pertinent regulations and instructions were followed; and

(7) An opinion as to whether or not the loss or deficiency was proximately caused by the individual's fault or negligence.

e. *Guidelines for determining fault or negligence*. In formulating an opinion on whether a loss of funds or property was "proximately caused" by "fault or negligence" on the part of an accountable individual, the following guidelines should be observed:

(1) While there is no burden of proof on the Government to show fault or negligence, neither is there any presumption of fault or negligence on the part of the individual.

(2) The individual is free from fault or negligence if:

(a) there is no direct evidence that fault or negligence on his part was the proximate cause of the loss, and

(b) There is no circumstantial evidence (including an established pattern of carelessness in dealing with funds entrusted to him) which raises a strong inference that fault or negligence on his part was the proximate cause of the loss.

(3) "Fault" is defined as conduct or behavior evidencing bad faith, mismanagement, or neglect of care, or as performance resulting from inattention, dereliction, or perversity.

(4) "Negligence" is defined as conduct which fails to conform to the standard of care which a reasonable, prudent, accountable person would have exercised under the same or similar circumstances. Acts or omissions which, without good justification, deviate materially from duties imposed by regulations or from customary and normal disbursing, collection, or safeguarding procedures or standards would ordinarily constitute negligence for the purposes of the statute involved.

(5) A "proximate cause" is defined as an act or omission which has the direct and foreseeable consequence of producing the loss or creating conditions in which the loss coud occur, and without which the loss would not have occurred.

f. *Distribution.* After action by the convening authority, the completed record or report shall be forwarded in accordance with section 0211b, except:

(1) In a case of a loss or deficiency of disbursing funds or documents, the Commander, Navy Accounting and Finance Center should be the last via addressee; and

(2) In a case of loss or deficiency of government property or of the funds derived from the sale of property, the Commandant of the Marine Corps (Code LA); the Chief, Bureau of Medicine and Surgery; or the Commander, Naval Supply Systems Command, as appropriate. should be the last via addressee.

0910 CLAIMS FOR OR AGAINST THE GOVERNMENT

a. *General.* A fact-finding body ordered to inquire into a certain incident may, if a claim or possible claim for or against the Government is involved in the same incident, be ordered to include in its inquiry those considerations required by Chapter XX, General Claims Regulations; Chapter XXI, Personnel Claims Regulations; or Chapter XXIV, Medical Care Recovery Act Claims Regulations. In such case, the separate investigation required by those claims regulations need not be made. This authority to combine the claims investigation with an inquiry or investigation ordered for other reasons is not to be construed as a mandatory directive. A separate claims investigation may always be ordered in the discretion of the commanding officer of the command concerned. For responsibility for ordering an investigation in situations where a claim for or against the Government is involved, see chapters XX through XXIV.

b. *Procedure when claims matters are involved.* When a JAG Manual investigation is directed to include a claims investigation, the fact-finding body should be guided, in general, by the provisions of chapters XX through XXIV, as appropriate.

c. *Action on record.* When an investigative body has acted in a combined capacity, the action on the record by the convening authority shall also include the matter required by chapters XX through XXIV, as appropriate.

d. *Forwarding record.* When an investigative body has acted on a claims matter exclusively, the record shall be forwarded in accordance with the provisions of the appropriate claims regulations. If the inquiry or investigation has acted in other matters as well as acting as a claims investigation, a copy of the record for use in claims adjudication should be forwarded as prescribed in those regulations, and the original should be forwarded according to the procedures outlined in section 0210. The copy of the record forwarded for claims adjudication should contain all claims filed, together with supporting evidence and any other items dealing exclusively with, and required in, the adjudication of the claims. The original of the record should contain a notation that the claims material was forwarded in that manner.

e. *Claims arising in foreign countries.* Claims which arise in foreign countries should be handled under Chapter XX, General Claims Regulations, Chapter XXII, Foreign Claims Regulations, or pursuant to applicable treaties or other international aggreements, and reference should be made in the appointing order to these sources, as appropriate, for guidance in conducting the investigation.

f. *Sonic booms.* A Navy or Marine Corps aviation activity receiving notice that a sonic boom has occurred within the United States, regardless of whether damage has been reported, will immediately undertake an inquiry to determine whether a military aircraft could have been the cause of such disturbance. The aviation activity nearest to the locality at which the alleged sonic boom occurred will be responsible for such inquiry, which shall include queries to all Navy, Marine Corps, Air Force, Air National Guard, and other military facilities in the area from which supersonic aircraft operate to determine the probable source. A thorough check of all traffic, transient as well as local, is imperative. In the investigation of alleged sonic boom damage, the following guidance is provided:

(1) Every person investigating alleged sonic boom damage should be familiar with *The Sonic Boom*, AFLC, (Air Force Logistics Command) P-85.1.

(2) The principal types of damage complained of are glass and plaster damage. Less frequently, claims are received for damage allegedly caused to brick walls, driveways, concrete foundations, and other major structural elements; however, studies have shown that it is almost impossible for a sonic boom to generate over-pressures of sufficient intensity to cause such structural damage regardless of the altitude at which the aircraft was flown. Whenever questionable items of damage are claimed, the services of a construction engineer or other professionally qualified person should be employed either as investigator or as consultant to the investigator.

(3) Promptness in investigating sonic boom claims by qualified personnel is essential.

(4) The following information should be included in the investigative report, if practicable:

(a) Detailed description of alleged damage.

(b) Photographs of the allegedly damaged building or structure and of the specific area of damage.

(c) Detailed description of the building or structure involved, including significant details of construction, size of rooms, age, and general state of repair.

(d) Detailed examination and description of any alleged plaster damage.

(e) Existence or absence of glass damage in the allegedly damaged building or structure, and whether any other glass damage resulting from the incident was reported and verified.

(f) Whether windows and doors were open or shut at the time of the boom.

(g) Whether any loose objects– such as dishes, glassware, or trinkets–inside the building or structure were moved as the result of the boom.

(h) Existence or absence of similar damage to other buildings in the immediate neighborhood.

(i) Type of surrounding community development; type of construction of buildings or structures in the immediate area; density; etc.

(j) Occurrence or absence of seismic disturbances registered in the locality at the time involved.

(k) Other potential sources of damage, such as heavy truck or rail traffic, explosions or earthquakes, and their distance and direction in relation to claimant's building or structure.

(l) Any unusual weather or climatic conditions which may have affected the building or structure.

(5) If, after investigation, it is considered that a sonic boom did occur and that it resulted from Navy or Marine Corps operations, action shall be taken in accordance with the provisions of section 2060 of this Manual. If it is considered that the sonic boom was caused by activities of another U.S. military service, any claim received, together with the investigative material shall be forwarded to the appropriate command and the claimant so informed. If it is considered that the sonic boom was caused by activities other than as listed above (*e.g.*, National Aeronautics and Space Administration, aircraft manufacturers) or if the source cannot be determined, action shall be taken in accordance with the provisions of section 2060 of this Manual.

NOTE: Opinions as to the cause of a sonic boom shall not be expressed to a complaining party, except by a person authorized to negotiate the settlement of a claim.

0911 RESERVISTS

a. *Statutory provisions.* Section 6148 of 10 U.S.C. governs entitlement to benefits administered by the Department of the Navy for persons in the Naval Reserve or the Marine Corps Reserve who are injured, contract a disease, or die during periods of active duty, active duty for training, or inactive-duty training (drill), reads as follows:

"Disability and death benefits: Naval Reserve and Marine Corps Reserve

(a) A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty, or to perform inactive duty training, for any period of time, and is disabled in line of duty from injury while so employed, or the beneficiary of such a member who dies from such an injury, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service. For the purpose of this subsection a member who is not in a pay status shall be treated as though he were receiving the pay and allowances to which he would be entitled if serving on active duty.

(b) A member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve who is ordered to active duty, other than active duty for training under section 270(b) of this title, for a period of more than 30 days, and is disabled in line of duty from disease while so employed, or the beneficiary of such a member who dies from such a disease, is entitled to the same pension, compensation, death gratuity, and hospital benefits as are provided by law or regulation in the case of a member of the Regular Navy or the Regular Marine Corps of the same grade and length of service.

(c) Subsections (a) and (b) do not authorize the hospitalization of dependents of members of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve.

(d) A member of the Naval Reserve or the Marine Corps Reserve who, in time of peace, becomes ill or contracts disease in line of duty while he is on active duty or performing inactive-duty training is entitled to receive at Government expense medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such a member is also entitled to necessary transportation and subsistence incident to treatment and return to his home upon discharge from treatment. The treatment may not extend beyond ten weeks after the member is released from active duty, except–

(1) upon an approved recommendation of a board of medical survey consisting of one or more officers in the Medical Corps; or

(2) upon authorization of the Surgeon General, based on the certificate of a reputable physician that the illness or disease is a continuation of the illness or disease for which the member was initially treated and that benefit will result from further treatment.

(e) If a person is entitled to benefits under subsection (a) or (b) and under–

(1) section 6327 of this title; or

(2) section 331 of title 38;

he must elect the provision that is to be applied to him."

NOTE: Pay and allowances for reserve members under 10 USC 6148(a) and (b) are now authorized under 37 USC 204(i).

b. *Active duty for training.* The period of active duty for training extends from the time of reporting to the time of release, and, if the orders to active duty for training provide for travel, the time of travel to and from the duty station not in excess of the allowable constructive travel time as prescribed in paragraphs 10241 and 80211, DODPM.

c. *Inactive duty training (drill).* Employment in inactive duty for training (drill) normally includes only that period between muster and dismissal.

d. *Investigation.* Incidents involving injury or death of reservists occurring during a period of active duty for training or inactive duty training, as defined above, or any case involving a question of whether a disease or injury was incurred during a period of active duty for training or inactive duty training, as defined above, should be investigated. The injury report form (*see* chapter VIII), may be used in proper cases to report the investigation of injury, but not death cases. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, the responsibility for the conduct of investigations in these cases is ordinarily in the area coordinator or subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, in whose geographic area of responsibility the incident occurred. The Commanding General, 4th Marine Division, and the Commanding General, 4th Marine Aircraft Wing, are responsible for ensuring that investigations are conducted into incidents of reservists within their commands.

e. *Information required*

(1) The hour on which the reservist began to travel directly to or from the duty or training;

(2) The hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) The method of travel used;

(4) The actual itinerary; and the authorized itinerary;

(5) The authorized mode of travel and authorized travel time;

(6) The manner in which the travel was performed; and

(7) The place, time, and circumstances of injury and/or death.

0912 FIREARM ACCIDENTS

a. *General.* The record of the JAG Manual Investigation should document all of the relevant circumstances surrounding an incident involving self-inflicted gunshot wounds.

b. *Warnings required.* Since most firearm accidents occur with no witnesses other than the victim, it is of utmost importance that advice pursuant to 0306 of this Manual be documented before the injured firearm handler is interviewed in the course of a JAG Manual Investigation.

c. *Specific facts required.* The following information should be included in the record:

(1) Date, time of day, place, and names and addresses of witnesses present. See section 0901.

(2) Description of physical location of incident, and light and weather conditions. See section 0817.

(3) Description of the firearm and its mechanical condition, especially safety mechanisms, and whether the safety mechanisms were used by the firearm handler.

(4) Description of firearm handler's formal training, experience, and familiarity with the firearm's mechanical condition, safety mechanisms, and proper use.

(5) Full discussion of any psychological problems, discussion of any mental impairment due to drug or alcohol use, and statement of mental responsibility. See section 0807 and 0808 of this Manual.

0913 MISCELLANEOUS

a. *Security violations.* For specific fact-finding requirements respecting investigations ordered to inquire into the loss, compromise, or subjection to possible compromise of classified information, see 4-102 of OPNAVINST 5510.1 series. Such reports are sent to CNO (009D) as ultimate addressee.

b. *Postal violations.* For specific fact-finding requirements respecting investigations ordered to inquire into postal losses or offenses, see 6203 U.S. Navy Postal Instructions, OPNAVINST 5112.1 series.

c. *Injury, disease, or death.* For specific fact-finding requirements respecting investigations ordered to inquire into injury, disease, or death of personnel, see section 0817 of this Manual.

d. *Fires.*

(1) The investigation of significant fires aboard ship or ashore should be documented in a JAGMAN investigation. Generally, a fire will be considered significant if any one of the following exists: damage is done to major/vital equipment; the origin of the fire is suspicious; the fire delays deployment; or causes significant change in operating schedule; degradation of mission capability occurs; naval personnel were responsible for the fire; the fire may have resulted from defective naval design specification or installation; or if unsound operating doctrine or procedures caused or contributed to the fire.

(2) This does not limit a commanding officer's authority to convene an investigation into any fire when he believes one is warranted.

(3) Essentials to be reported are:

(a) When was the fire reported?

(b) How fast was the response to the fire?

(c) Who responded to the fire? What was the level of damage control and fire fighting training of those who responded?

(d) What fire fighting equipment was used? What equipment could not be used? Why?

(e) What communications were used and what if any difficulties were there in communication?

(f) What time was the fire reported out?

(g) How long did it take to extinguish?

(h) What caused and contributed to the ignition and spread of the fire?

(i) What burned? What areas were involved?

(j) Identity of personnel injured or killed.

(k) When were the spaces involved last inspected and what discrepancies were noted?

(l) If a shipboard fire, was the ship at sea or in port? What was the ship's condition of readiness? What was the fire's effect on the ship's ability to carry out its mission?

(m) What is the cost to repair the damage done?

(n) Assess the possibility of occurrence of such a fire on a similar ship or installation.

(4) The foregoing investigative report is separate from the Safety report required by OPNAVINST 11320.25, and NAVMATINST 11320.5 for fires ashore, and by OPNAVINST 5102.1 for fires on board ship.

e. *Pollution incidents.* When air, ground, or noise-pollution incidents are required to be investigated or acted upon because of service regulations (other than the JAGMAN) or because of applicable Federal, state or local laws or regulations, a copy of any report should be submitted directly to the Judge Advocate General. In this regard, the format and content required by the applicable service instruction or civil law or regulation will govern, there being no requirement to adhere to the JAGMAN investigation format. Further guidance concerning investigations in conjunction with notices of violations of air and water-pollution statutes, less oil spills or discharges, is contained in CNO messages 171540Z Apr 78 (NOTAL) and 151124Z Jun 79 (NOTAL), CINCPACFLT message 282324Z Jun 79 (NOTAL) and CINCLANTFLTINST 6240.3 dated 11 Sept 1973, and will be incorporated into a planned revision to OPNAVINST 6240.3 series.

f. *Combined investigations of maritime incidents.* For maritime incidents involving two or more NATO member countries, a single investigation may, but need not, be conducted in accordance with the NATO Standardization Agreement 1179 (STANAG). Three alternative procedures are set out in the STANAG for investigating such incidents. They are:

(1) a combined board of inquiry;

(2) a national inquiry, attended by witnesses and/or observers from other nations.

(3) independent inquiries coordinated by the presidents of those inquiries.

Excerpts from the STANAG can be found in Appendix A-9-a.

Chapter X

ARTICLE 139 INVESTIGATIONS-REDRESS OF INJURIES TO PROPERTY

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1008 ACTION TO BE TAKEN BY COMMANDING OFFICER AND HIGHER AUTHORITY WHERE OFFENDERS ARE MEMBERS OF DIFFERENT COMMANDS

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1009 RECONSIDERATION

1010 EFFECT OF COURT-MARTIAL PROCEEDINGS

1001 STATUTORY AUTHORITY

This chapter outlines procedures for administrative settlement of claims when property is willfully damaged or wrongfully taken by members of the armed forces (Article 139, UCMJ).

1002 SCOPE

Claims for damage, loss, or destruction of property caused by a person or persons in the naval service, subject to the limitations in this section, are within the provisions of Article 139, UCMJ only if such damage, loss, or destruction is caused by riotous conduct, acts of depredation, or acts showing such reckless and wanton disregard of the property rights of others that a willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ are cognizable under Article 139. However, redress for damages resulting from such acts is not to be confused with disciplinary action under Article 109 or any other article of the UCMJ. See section 1010. Charges against pay under these regulations shall be made against the pay of persons shown to have been principal offenders or accessories. Membership in a certain organization or detachment and presence at the scene at the time the damages were sustained are not sufficient in themselves to make a person a principal or an accessory. There must be some evidence of active or passive participation.

1003 CLAIMS NOT COGNIZABLE

The following claims are not payable under this chapter.

a. *Claims payable under other regulations.* Claims for damage, loss, or destruction of property which are payable by the Government under the provisions of the general, personnel, or foreign claims regulations set forth in chapters XX-XXII or under admiralty claims procedure set forth in chapter XII. No charge will be made under these regulations against the pay of any person in the naval service to reimburse the claimant or the Government for payments warranted under other regulations or other statutes.

b. *Claims resulting from simple negligence.* Claims for damage, loss, or destruction of property resulting from simple negligence, whether or not within the scope of employment.

c. *Claims of subrogees.* Any portion of a loss covered by insurance, whether carried by the offender, the claimant, or a third party.

d. *Claims for personal injury or death.*

e. *Acts or omissions within the scope of employment.* Claims for damage, loss, or destruction of property resulting from acts or omissions, while the offender is acting within the scope of his employment.

f. *Absence of riotous or violent conduct.* Claims arising from larceny, wrongful appropriation, forgery, or deceit, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous or violent conduct; or claims for damages arising from breach of contract.

g. *Government property.* Reimbursement for damage, loss, or destruction of property of the United States.

1004 LIMITATIONS OF APPLICATIONS

a. *Time limitations.* In order for a claim to be cognizable under Article 139, UCMJ, a complaint out of which such claim arises must have been made to military authority within 30 days of the date of the incident.

b. *Aliens.* Claims of aliens under Article 139, UCMJ, in addition to the exclusionary limitations of these regulations, are subject to all laws and regulations controlling payments to aliens in effect at the time of action on the claim. If the claimant is a national of a country at war with the United States, or an ally of such foreign country, the claim will not be approved unless it be determined that the claimant is friendly to the United States.

c. *Limitation of amount of assessment.* No assessment exceeding the amount of $750 will be made against the pay of any offender under the provisions of Article 139, UCMJ for any single act or incident.

d. *Acts of property owner.* When the acts or omissions of the owner, his lessee, or his agent were a proximate contributing factor to the loss or damage of the property involved, assessment will not be made against any offender in excess of that amount for which he is found to be directly and solely responsible.

c. *Only direct damages considered.* Assessment will be made only for direct physical damages. Indirect, remote, or inconsequential damage will not be considered.

1005 COMPLAINT BY INJURED PARTY

a. *Ordering investigation.* Whenever a complaint is made to a commanding officer that willful damage has been done to property or that property has been wrongfully taken by members of the naval service, and the nature of the damage or wrongful taking is within the purview of Article 139, UCMJ, the commanding officer, if he has authority to convene special courts-martial and if an alleged offender is a member of his command, shall order an investigation of the matter. If the alleged offender is not a member of his command, he shall forward the complaint and all evidence which can be obtained locally to the commanding officer of the alleged offender. If the command of an alleged offender is not known, the complaint and all evidence which can be obtained locally shall be sent to the Chief of Naval Personnel or the Commandant of the Marine Corps, whichever is appropriate, for forwarding. If the commanding officer of an alleged offender does not have authority to convene special courts-martial, he shall forward the complaint to his superior with such authority, who shall, for the purposes of Article 139, UCMJ, be considered the commanding officer of the offender. If the incident complained of occurred at a place remote from the command of the alleged offender, and the commanding officer of the alleged offender so requests, the commanding officer of the naval activity located nearest the place of the incident shall order an investigation of the matter as required by Article 139, UCMJ and these regulations. Upon completion of such investigation, the record thereof shall be forwarded to the commanding officer who requested the investigation for action required by section 1007. Where more than one offender or more than one command is involved, the matter shall be handled by a single investigation, if practicable. In this connection see sections 0107 and 1008.

b. *Advice to claimant.* The commanding officer who orders the investigation of the complaint shall fully advise the claimant by the most practicable means, that:

(1) In order for a claim to be cognizable under Article 139, UCMJ, the claimant must be within the provisions of section 2011 of this Manual.

(2) A claim shall be presented, if practicable, in triplicate. It should contain a statement setting forth the amount of the claim, insurance coverage, and available detailed facts and circumstances surrounding the incident from which the claim arose. When there is more than one claimant as a result of a single incident, each such claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized agent or representative. The appropriate portions of section 2013 of this Manual set forth additional information and evidence which ordinarily should be supplied by a person making claim for damage or loss of property.

(3) Such claim must be submitted to the investigating body as expeditiously as possible and not later than 30 days from the date of this advice.

1006 INVESTIGATION

a. *General* The procedure for redress of injuries to property (Article 139, UCMJ) is accomplished by the use of a formal investigation or a court of inquiry. The claim is the subject of inquiry by either of these bodies, and the rules governing the appropriate type of investigation are applicable. The Privacy Act of 1974 must be fully complied with when conducting the formal investigation or court of inquiry and the record must demonstrate the compliance. See section 0308 and Appendix A-3-a.

b. *Fact-finding body.* The fact-finding body appointed to investigate a complaint under Article 139, UCMJ shall consist of from one to three commissioned officers. Subject to the provisions of these regulations, pertinent portions of section 2006 and 2007 respecting matters to be ascertained in investigating property damage are applicable. The claim of the owner or custodian of the property involved shall be made an enclosure to the record of proceedings of the fact-finding body.

c. *Statutory requirements and powers.* Under the authority of Article 139, UCMJ, witnesses may be summoned to testify at the investigation in the same manner as for courts-martial. See paragraph 115, MCM. However, when an investigation is convened to inquire into other matters in addition to investigating a complaint under Article 139, UCMJ, the power of subpoena shall not be used to compel the attendance of witnesses whose testimony is not directly related to the Article 139 claim. Witnesses before such investigations shall be examined on their oath or affirmation. Depositions, documents, and other evidence may be received in evidence.

d. *Rights of an alleged offender.* An alleged offender shall, if practicable, be accorded the rights of a party. See chapter III. If such rights are not accorded an alleged offender, and such rights have not been waived by him, he shall, prior to any charge being made against his pay, be afforded the opportunity to inspect the record of proceedings or a copy thereof. He shall, in such a case, submit a signed statement in regard thereto or to the effect that he does not desire to make such a statement. If, by reason of unauthorized absence or other factors, the rights of a party cannot be afforded to an alleged offender, a full and complete report of the reasons therefor shall be included in the record of proceedings. If, at the time of the convening of an Article 139 investigation, the identity of an offender is unknown, the investigation shall proceed with the subject matter of the inquiry. However, as soon as the identity of the offender becomes known, such person shall be called before the investigation (unless such action is impractical by reason of unauthorized absence or other factors), designated as a party to the investigation, and accorded his rights as such. Such proceedings and any waiver on the part of the offender shall be recorded verbatim. A person in an unauthorized absence or desertion status shall, while in such status, be considered as having waived his rights as a party to the investigation. Upon termination of the unauthorized absence or desertion, such person shall, if practicable, be accorded the rights of a party as to any portion of the investigation which has not then been completed.

e. *Measure of damages.* The inquiry or investigation is to be guided by the general claims regulations (chapter XX) in determining the measure of damages as a basis for recommending assessment.

f. *Findings.* The investigation shall make findings of fact as to the necessary elements set forth in these regulations pertaining to the validity of the claim under consideration and shall state its findings of fact and opinions, as appropriate, as to the person or persons responsible for the damage concerning which the claim is filed. Using the appropriate measure of damages, it shall determine the amount of damage incurred by the property owner.

g. *Recommendations.* The fact-finding body shall make recommendations as to the amount to be assessed and charged against the pay of the responsible party or parties. If more than one person is found to be responsible, recommendations shall be made as to the amount to be assessed against each offender.

h. *Consolidation of investigations.* A formal investigation conducted under Article 139, UCMJ may be combined with an investigation required for any other reason.

1007 ACTION TO BE TAKEN BY COMMANDING OFFICER AND HIGHER AUTHORITY WHERE OFFENDERS ARE MEMBERS OF ONE COMMAND

a. *Action by commanding officer.* When all of the offenders are members of the command of the officer who has ordered the investigation, such officer shall determine, in taking action on the record of such investigation, whether the claim is within the provisions of Article 139, UCMJ and these regulations. If he finds that the claim is within such provisions, he shall fix the amount to be assessed against the offender or offenders. Subject to the limitations of section 1004, charges totaling the amount of damages assessed and approved shall be made in such proportion as may be deemed just upon the pay of those shown to have been principals or accessories.

b. *Review.* If the commanding officer has authority to convene a general court-martial, no additional review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial jurisdiction, the original of the investigation, with the commanding officer's action thereon approving or disapproving the claim, shall be forwarded to the officer exercising general court-martial jurisdiction over the command. A copy of the report will be filed at the command concerned. Upon receipt by the officer exercising general court-martial jurisdiction, the report, as approved or disapproved, will be reviewed. Such reviewing authority shall place his action on the record and return the record to the commanding officer who, after noting his order or other actions thereon, shall forward it to the Judge Advocate General via any other appropriate commands. The final action of a commanding officer either directing a charge against the pay of an offender or denying the claim, shall be consistent with the reviewing authority's action. The claimant and offender or offenders shall be informed of such final order. Any determination that the claim is invalid or that no members of the command were pecuniarily responsible shall be communicated promptly to the claimant.

c. *Charge against pay.* The amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offender and the amounts so collected will be paid to the claimant. The amount charged in any single month against the pay of an offender under Article 139, UCMJ shall not exceed one-half of the basic pay of the offender. The basic pay of an offender shall be as defined in paragraph 126h(2), Manual for Courts-Martial. The action by the commanding officer in ordering the assessment against the pay of an offender shall be conclusive on any disbursing officer for payment by him to the claimant of the damages assessed, approved, charged, and collected.

1008 ACTION TO BE TAKEN BY COMMANDING OFFICER AND HIGHER AUTHORITY WHERE OFFENDERS ARE MEMBERS OF DIFFERENT COMMANDS

a. *Action by common superior.* Where the offenders are members of different commands the investigation or investigations conducted under Article 139, UCMJ shall be forwarded, if practicable, to the common superior who exercises general court-martial jurisdiction. In such circumstances, a commanding officer who ordered an investigation shall not make charges against the pay of an offender, but shall make recommendations in this regard. If an alleged offender was neither accorded the rights of a party nor subsequently afforded the right to inspect the investigative report and make a statement thereon, a copy of the report shall be forwarded to such offender for his inspection and his statement. This statement may set forth the member's version of the incident or it may merely reflect the fact that he does not desire to avail himself of the opportunity. The statement shall be forwarded to the superior exercising general court-martial jurisdiction who is to adjudicate the claim. The common superior commander shall fix the amount, if any, to be assessed against the offender or offenders and direct the appropriate commanding officers to take action accordingly. See section 1007b-c. The common superior shall forward the record, with his action and all statements appended, to the Judge Advocate General via appropriate commands.

b. *Forwarding to SECNAV (JAG).* Where it is not practicable or possible to carry out the procedure prescribed in section 1008a, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of an offender until directed by the Secretary of the Navy (Judge Advocate General).

1009 RECONSIDERATION

In the absence of newly-discovered evidence, an adjudication pursuant to these regulations shall be final except as to the Secretary of the Navy (Judge Advocate General). In the event of newly discovered evidence deemed sufficient to warrant reopening the matter, further investigation shall be conducted by the commanding officer and forwarded with recommendations to the Judge Advocate General.

1010 EFFECT OF COURT-MARTIAL PROCEEDINGS

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender; consequently, a person may be tried and punished for violation of the UCMJ without regard to proceedings under these regulations. The two proceedings, one disciplinary and the other administrative, are legally independent of each other and action in one proceeding is not determinative in the other; the court-martial is of a criminal nature and the assessment of damages is of a civil nature. Acquittal or conviction of the alleged offender by court-martial is evidence but is without independent controlling effect upon the proceedings under Article 139, UCMJ or approval or denial of a claim thereunder.

CHAPTER XI

ARTICLE 138 INVESTIGATIONS–COMPLAINTS OF WRONGS

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1101 PURPOSE

To establish procedures for the preparation, submission, and processing of complaints made pursuant to Article 138, Uniform Code of Military Justice.

1102 STATUTORY PROVISION

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon. Article 138, UCMJ; 10 U.S.C. § 938.

1103 DEFINITIONS OF TERMS AND PHRASES USED IN THIS CHAPTER

a. *Complaint of wrongs:* a procedure by which a member of the armed forces, either officer or enlisted, solicits relief from an action of his commanding officer which the member considers to be without basis or unauthorized, arbitrary and capricious, unfair, discriminatory, or unjust, and which results in a personal detriment, harm, or injury to the complainant, which is capable of redress in command channels without resort to trial by court-martial.

b. *Commanding officer:* any commissioned officer or warrant officer empowered to impose nonjudicial punishment upon the complainant pursuant to Article 15(b) or (c), UCMJ, and section 0101.

c. *Respondent:* the commanding officer (or his successor) against whom the complaint of wrongs is made.

d. *Wrongs:* any and all actions, except those set forth in 1104e, that may be taken or caused by a commanding officer, under color of his Federal military authority, resulting in detriment, harm, or injury to a subordinate officer, warrant officer, noncommissioned officer, or enlisted person, which are without substantial basis or unauthorized, arbitrary and capricious, unfair, discriminatory, or unjust, and which are personal to the complainant and are properly capable of redress in command channels without resort to trial by court-martial. The wrong need not have been committed personally by the complainant's immediate commanding officer, but may have been committed by any commanding officer as defined in subsection b above. The wrong may consist of either affirmative action or passive inaction.

e. *Redress:* any lawful action taken by the commanding officer, the officer exercising general court-martial jurisdiction, or any officer in the chain of command [see section 1105c] which restores to the complainant whatever rights, privileges, property, or status he would have been entitled to had the wrong not occurred.

f. *Officer exercising general court-martial jurisdiction:* the officer (or his successor in command) exercising immediate general court-martial jurisdiction over the respondent. In a case in which the complaint is forwarded to the Secretary of the Navy for resolution pursuant to section 1105b, the Secretary of the Navy or his designee shall act, with respect to that complaint, as the officer exercising general court-martial jurisdiction.

g. *Examination into or proceedings on a complaint:* an examination or proceedings consisting of either a formal or an informal inquiry into all facts material to the complaint. [See section 1108a.] An inquiry may be considered informal when the officer exercising general court-martial jurisdiction personally makes the necessary inquiry without formal hearings, or when he instructs a subordinate officer to inquire informally into the matter and report back to him. The inquiry is considered formal when the matter is referred to a court of inquiry or when a board of officers or an investigating officer is appointed in writing to inquire into the allegations. If a formal inquiry is initiated, it must be conducted in accordance with Chapter V. If an informal inquiry or JAG Manual investigation is considered necessary or appropriate, see section 0308 to determine whether Privacy Act statements are required.

1104 POLICY

a. It is the policy of the Department of the Navy to resolve complaints of wrongs at the lowest possible level of command and to provide administrative procedures to effect such resolution. Article 138 places the principal responsibility for the resolution of complaints of wrong upon the officer exercising general court-martial jurisdiction over the respondent. The officer exercising such general court-martial jurisdiction is required to take proper measures to redress the wrong(s) complained of. In certain types of cases, specific administrative procedures, including review and appeal, already exist and provide a forum for the consideration and review of actions deemed unjust by the recipient of such actions. Such other forums and procedures may involve consideration by review boards or officers possessing expertise directly relevant to the type of case to be considered, *e.g.*, Field Naval Aviator Evaluation Boards to consider continuation in flight status, and Review Boards to consider enlisted Marines for reduction in grade. When the officer exercising general court-martial jurisdiction receives a complaint of wrongs which may properly be reviewed through such other administrative forums or procedures, he shall determine whether or not the complaint is subject to resolution in such a channel. If so, the officer exercising general court-martial jurisdiction may – but is not required to – refer the complainant to those channels. (It is not appropriate, however, to refer the complainant to the forums or procedures listed in subsections g through i below). In the alternative, the officer exercising general court-martial jurisdiction may conduct or cause to be conducted, an independent inquiry. In either case, the examination and decision in the matter by the officer exercising general court-martial jurisdiction shall constitute the requisite "examination into the complaint" within the meaning of Article 138. If the officer exercising general court-martial jurisdiction refers the complaint to other existing channels, he shall arrange to be advised of the results of the consideration of the complaint in those channels. Upon receipt of this advice, the officer exercising general court-martial jurisdiction shall complete his consideration of the complaint in light thereof, and shall proceed in accordance with section 1105c.

b. A complaint lodged for the purpose of seeking disciplinary action against others does not consitute a complaint made pursuant to Article 138, UCMJ.

c. A wrong committed by a commanding officer superior in command to the complainant's commanding officer is properly cognizable under Article 138, UCMJ.

d. Any complaint which is asserted under Article 138, UCMJ – including those which, by definition, are excluded from the scope of the Article – will be forwarded to the officer exercising general court-martial jurisdiction over the respondent.

e. The procedures prescribed herein are not to be used to attack collaterally the findings or sentence of a court-martial or the imposition of a nonjudicial punishment, which are expressly governed by other articles of the Uniform Code of Military Justice.

f. The procedures prescribed herein are not to be used to attack collaterally the results of administrative discharge proceedings in the case of officer or enlisted personnel, which are governed by Bureau of the Naval Personnel Manual, Article 5040200, and Chapters 5 and 6, Marine Corps Separation and Retirement Manual.

g. The procedures prescribed herein are not applicable to appeals from an order or decision of an immediate supervisor who is not a commanding officer, which are governed by Article 1105, U.S. Navy Regulations, 1973.

h. These procedures are not to be confused with request mast procedures prescribed by Article 1107, U.S. Navy Regulations, 1973.

i. The procedures prescribed herein are not applicable to applications to the Board for Correction of Naval Records, which are governed by 10 U.S.C. §1552.

1105 JURISDICTION

a. *Who may complain.* The complainant must be a member of the armed forces at the time the complaint is made. This includes inactive duty reservists who face involuntary call to active duty and whose complaints involve such prospective activation.

b. *Who may be the subject of a complaint.* Any commanding officer, as defined in subsection 1103b, may be the respondent or the subject of a complaint of wrongs. In cases of complaints by individuals against the actions of the Chief of Naval Operations, the Commandant of the Marine Corps, or other officers at the departmental level who do not report to the Chief of Naval Operations or the Commandant of the Marine Corps, the complaint shall be addressed to the Secretary of the Navy and forwarded via the chain of command.

c. *Who shall consider the complaint.* With the exceptions set forth in section b above, jurisdiction to examine into complaints, take action thereon, and forward the requisite report of proceedings, which shall consist of a statement and/or report of findings and the reasons therefor, lies initially with the officer exercising general court-martial jurisdiction over the respondent. Where such officer lacks the authority to grant the necessary redress, he shall forward the complaint, with appropriate recommendations for disposition, to the next superior in the chain of command who does possess the necessary authority to redress the wrong. Regardless of who ultimately or intermediately takes action to redress the wrong, primary jurisdiction over the complaint and the concomitant primary responsibility for forwarding the report of proceedings to the Secretary of the Navy remains vested in the officer exercising immediate general court-martial jurisdiction over the respondent, except where originial and final action to resolve the complaint is taken at the departmental level. [See section 1109a.]

d. *Authority of intermediate superior officers to whom a complaint is forwarded.* An intermediate superior officer to whom a complaint is forwarded may comment on the merits of the complaint and may add pertinent evidentiary material to the file. He may also grant the redress, if empowered to do so, and note his action in the record. In any event, he shall then promptly forward the complaint and allied papers to the officer exercising general court-martial jurisdiction over the respondent.

1106 PROCEDURE

a. *Form of complaint.* The complaint shall:

(1) Be in writing and be signed by the complainant;

(2) Include a statement that it is made pursuant to the provisions of Article 138, UCMJ;

(3) Set forth all of the relevant facts applicable to the grievance;

(4) Be addressed, through the chain of command, to the appropriate officer exercising general court-martial jurisdiction – except in cases falling within the scope of section 1105b, in which case the complaint shall be addressed, via the chain of command, to the Secretary of the Navy;

(5) Clearly identify the respondent;

(6) State that the complainant, pursuant to section 1106d, has previously requested redress, in writing, of his commanding officer or of the superior officer in the chain of command who committed the wrong, and that he was denied such redress (a description of this previous request for redress and of its results should be included);

(7) Set forth the specific relief desired;

(8) Include all available evidence, including affidavits and statements of witnesses, supporting the complaint or providing other pertinent information;

b. *Joinder.* The complaint may not be joined with complaints of other individuals. Similarly, each complaint shall seek redress for the action of only one respondent. If the complainant considers himself wronged by more than one respondent, the wrongs of each respondent shall be the subject of a separate complaint.

c. *Time limitations.* A complaint must be submitted within a reasonable time after the occurrence of the alleged wrong. In the absence of unusual circumstances, a complaint initiated more than 90 days after discovery by the complainant of the alleged wrong may be considered to be untimely. The period during which the complainant's application to his commanding officer pursuant to section 1106d is being considered by the latter is not includible, however, in this 90-day period. The officer exercising general court-martial jurisdiction may deny relief solely on the ground that the complaint was not filed in a timely manner. Such action, however, does not obviate the requirement for forwarding the report of proceedings to the Secretary of the Navy.

d. *Application to commanding officer.* The essence of a complaint properly cognizable under Article 138 is a wrong, coupled with the commanding officer's refusal or failure to redress such wrong. Accordingly, the commanding officer must be afforded the opportunity to redress the wrong as a condition precedent to any subsequent action pursuant to Article 138. Where the complaint lies against an officer, the complaint shall be submitted to the officer complained against via the chain of command. In either event, the respondent will act upon the application in a timely manner and will notify the complainant of such action.

e. *Substance of the complaint.* The complaint is properly cognizable under Article 138 if, on its face, it alleges a wrong as defined in section 1103d. Statements, documents, or other evidentiary matter may be submitted by the complainant to assist in expediting the inquiry.

f. *Participation by complainant in proceedings on complaint.* Article 138 does not give a complainant a right to participate in actions taken on his complaint after its submission. He may be named as a party, if appropriate, and accorded the rights of such, however, in any formal inquiry conducted pursuant to sections 1103g and 1108a. He may likewise be requested to submit clarifying or explanatory statements for consideration in connection with his complaint.

1107 LEGAL ADVICE

A judge advocate, where reasonably available, may be consulted by a complainant and upon request may provide legal advice concerning the submission of an Article 138 complaint. Such advice should include an opinion whether an Article 138 complaint is an appropriate procedure under the circumstances. If not, advice should be given concerning the appropriate law or regulation under which the member may properly proceed in his quest for appropriate relief. This section is not to be construed as requiring the assignment of a judge advocate to represent a complainant in any proceedings held pursuant to Article 138, or to create a right to individual military counsel. A complainant may retain civilian counsel at his own expense, to assist him in connection with the submission of his complaint.

1108 CONSIDERATION OF THE COMPLAINT BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL AUTHORITY

Upon receipt of the complaint, the officer exercising general court-martial jurisdiction shall:

a. Cause to be conducted an appropriate inquiry into the facts on which a complaint is based. Such inquiry may be formal or informal in nature. [See section 1103g.] The extent and nature of such inquiry is discretionary with the officer exercising general court-martial jurisdiction, and will depend upon the seriousness of the allegations; the available time; and the exigencies of the service. Regarding participation by the complainant in this inquiry, see section 1106f.

b. If redress is warranted and it is within his authority to do so, grant the redress; or,

c. If he lacks authority to grant the redress requested, examine into the complaint as specified in section 1108a, and, where redress is considered to be warranted, forward the complaint, along with his specific recommendations concerning appropriate redress, to the cognizant headquarters, bureau, office, or facility having authority to grant such redress, informing the complainant of the referral; or,

d. After examination into the allegations, notify the complainant that the complaint is considered to be without merit, and submit the required report to the Secretary; or,

e. Return the correspondence to the complainant, informing him that the complaint is not one which lies within the scope of Article 138, in accordance with the definitions set forth in section 1103 and the policies set forth in section 1104, or that it is incomplete or otherwise deficient in substance. Complaints returned in accordance with this subparagraph will specifically state why the complaint is not one which lies within the scope of Article 138, or wherein it is incomplete or deficient in substance. In the former case, if there are other channels available which are appropriate for resolution of the alleged wrong, the complainant should be advised of these channels and the methods by which to proceed. In the latter case, the complainant shall be advised that he may have his complaint forwarded, despite its incompleteness or deficiency in substance, if he chooses to do so; or,

f. Within his discretion, delay his examination into a complaint if there is pending a court-martial, an appeal of the findings or sentence of a court-martial, or a complaint in another case, the consideration of which is reasonably likely to result in clarification of the issues or redress of the alleged wrong. Such delays shall not extend beyond completion of action in the related court-martial, appeal, or case, or beyond thirty days from the date of receipt of the complaint by the officer exercising general court-martial jurisdiction, whichever is earlier.

1109 ACTION ON THE COMPLAINT

a. *Responsibility for redress.* Except in those cases wherein the original complaint is addressed to the Secretary of the Navy [see section 1105b], the officer exercising general court-martial jurisdiction has primary responsibility for granting the necessary redress or procuring the desired relief, if warranted. Such responsibility is nondelegable. [See section 1105c.]

b. *Criteria for evaluation.* If there is no substantial basis for the action of the officer complained against, or if the action is unfair, unjust, discriminatory, or arbitrary and capricious, then a wrong has occurred. The determination as to whether or not a wrong has occurred should be based upon all of the facts developed by the inquiry described in section 1103g. Although the complainant need not present any evidence in support of his complaint, the amount and weight of evidence which is ultimately presented by the complainant is an important factor to be considered by the officer examining into the complaint. Such officer is expected to take all reasonable measures for ascertaining the facts.

1110 WITHDRAWAL OF COMPLAINT

A complainant may withdraw his complaint at any time.

1111 NOTIFICATION TO COMPLAINANT

a. *Prior to action by the officer exercising general court-martial jurisdiction.* Prior to acting on a complaint received by the officer exercising general court-martial jurisdiction, that officer shall ensure that the complainant has been informed of the substance of any forwarding endorsements which have added substantive comments or new factual matter, and afford the complainant the opportunity to rebut any adverse matter contained therein.

b. *Subsequent to action by the officer exercising general court-martial jurisdiction.* The officer exercising general court-martial jurisdiction shall advise the complainant, in writing, of the action he has taken on the complaint.

1112 FORWARDING TO THE SECRETARY OF THE NAVY

Except in those cases in which original action on the complaint is taken at the departmental level, the officer exercising general court-martial jurisdiction is responsible for forwarding a report of the proceedings to the Secretary of the Navy. Such report shall be forwarded to the Secretary of the Navy (Judge Advocate General). Marine Corps activities shall, in addition, include the Commandant of the Marine Corps (Code JA) as a via addressee. The report shall include the following:

a. The original complaint — or, if unavailable, a certified copy thereof;

b. A report of the proceedings had thereon;

c. A statement of the action taken thereon by the officer exercising general court-martial jurisdiction;

d. A copy of the reply of the officer exercising general court-martial jurisdiction to the complainant, informing the latter of the action taken on the complaint.

1113 ACTION BY THE JUDGE ADVOCATE GENERAL

a. *When complaint has been acted upon.* Upon receipt of a complaint which has been acted upon by the officer exercising general court-martial jurisdiction, the Judge Advocate General shall:

(1) (a) Ensure that there has been substantial compliance with Article 138, UCMJ, and this Chapter; or,

(b) Return the file to the appropriate officer exercising general court-martial jurisdiction for additional investigation or further action.

(2) Forward the file to the Secretary of the Navy with such evaluations and recommendations as he may consider appropriate.

b. *When complaint is addressed to the Secretary of the Navy for resolution.* When a complaint falls within the scope of section 1105b and is forwarded for resolution at the departmental level, the Judge

Advocate General shall provide such legal advice to the Secretary of the Navy as may be required.

1114 REVIEW BY THE SECRETARY OF THE NAVY

a. *Scope.* The action of the officer exercising general court-martial jurisdiction is subject to review by the Secretary or his designee.

b. *Action where redress was granted.* The Secretary may set aside actions favorable to the complainant only if such redress was beyond the statutory or regulatory authority of the officer granting the redress.

c. *Action where redress was denied.* The Secretary may direct that further proceedings be had in the matter, or he may direct that all or a portion of the requested redress be granted.

d. *Notification to complainant.* If, upon review of an adverse resolution of a complaint by the officer exercising general court-martial jurisdiction, such resolution is determined to be correct in law and fact, the complainant shall be so notified by the Secretary of the Navy or his designee.

e. *Finality.* Action on a complaint shall be considered final, and the complainant will have exhausted his administrative remedy under Article 138, UCMJ –

(1) When the action taken by the Secretary states that the action of the officer exercising general court-martial jurisdiction is approved.

(2) If the file is returned or is referred to another command or office for corrective action or for further investigation, when the directed action has been completed and the report of such completed action has been reviewed by the Secretary.

(3) When no action is taken by the Secretary within 60 days of receiving the complaint, or within 60 days of receiving the report of action described in the preceding subsection. (This subsection is not applicable to complaints forwarded to the Secretary for original action pursuant to subsection 1105b).

Exhaustion of remedy under Article 138, UCMJ, has no bearing upon remedies which may be available under other statutes or regulations, including the Board for Correction of Naval Records and remission-of-indebtedness procedures.

CHAPTER XII

ADMIRALTY CLAIMS

1201 SCOPE

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1212 FOREIGN GOVERNMENT CLAIMS

1213 PERSONAL INJURIES

1214 SALVAGE

1215 TOWAGE AND PILOTAGE

1216 DAMAGES

1217 SUMMARY

1201 SCOPE

a. This chapter applies to admiralty-tort claims. The purpose of this chapter is to assist forces afloat and ashore in the handling of matters involving admiralty law. It should be helpful both to commanding officers and judge advocates in reporting, investigating, and processing admiralty incidents. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property. Most collisions involve claims both by and against the Navy. It is not intended to present a comprehensive exposition of admiralty law. It is intended to serve only as a summary of the Navy's practices in admiralty matters. This chapter does not apply to incidents involving only U.S. naval vessels or property.

b. Admiralty is a specialized field of law. Its doctrine of mutual or proportionate fault is contrasted with the common law rule of contributory negligence as a complete defense. It has particular doctrines such as salvage, general average, and limitation of liability. While admiralty is itself a specialty, it is further subdivided into such specialties as collision, personal injury, cargo damage, charter parties, salvage, general average, etc. The Navy's admiralty practices and procedures represent a still further refinement in this specialized field.

c. The broad scope of this chapter is emphasized. It does not provide sufficient working instructions for dealing conclusively with particular matters or with admiralty claims. It does indicate broadly the procedures which are available. It also indicates where assistance and additional information may be obtained. *See* Appendix A-12-b.

d. The prime requisite in the effective handling of admiralty claims is to send *immediate notice* of any occurrence, however trivial it may seem, to the Admiralty Division of the Office of the Judge Advocate General and to the local judge advocate afloat or ashore. Such prompt reporting aids the proper investigation and disposition of admiralty claims under the Secretary of the Navy's statutory-settlement authority. It also protects the interests of the Government in cases which may reach litigation.

1202 ORGANIZATION

a. The Secretary of the Navy has administrative authority for settlement and direct payment, where the amount paid does not exceed $1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels. 10 U.S.C. §7622 (1970). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy. 10 U.S.C. §7623 (1970).

b. The Navy's admiralty-tort claims are handled in the Admiralty Division of the Office of the Judge Advocate General. Admiralty Division judge advocates are admiralty officers who have received specialized training in the Navy's admiralty practices. In addition, there are stationed in several naval legal service offices and district or naval base staff judge advocate offices, judge advocates who are also trained admiralty officers, and they act locally in admiralty matters.

c. These admiralty officers in the various naval districts and the Admiralty Division of the Office of the Judge Advocate General are prepared to offer advice, assistance, and guidance in the handling of all admiralty matters. Any question which may arise with respect to the applicability of this chapter or the handling of a particular incident may be referred to an admiralty officer or to the Judge Advocate General with a request for instructions and guidance.

d. The primary mission of the Admiralty Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists. The procedures described in this chapter are designed to accomplish that end.

e. The procedures outlined in this chapter are also designed to relieve forces afloat of the labor and difficulty which result when admiralty matters are not promptly reported and adequately investigated in the first instance. Instead of developing an independent investigatory procedure, certain essential requirements have been grafted upon the Navy's existing procedures. These requirements are intended to preserve evidence which may develop in appraising civil liabilities or in litigation. For example, they include the preservation of all original documentary data and the holding of damage surveys.

f. Certain aspects of civil liability may not be apparent to the naval command which is considering the administrative or disciplinary features of a particular casualty. The procedure which has been developed is intended to obtain all the necessary information in the first instance, when it is readily available. Therefore, the aim is to relieve operating units of continued inquiries and requests for information which would take place if matters were investigated and checked only as each stage developed. For instance, data as to repair costs and the detention claim of a naval vessel are developed during and at the end of the repair period, before necessary records have become dispersed.

g. The basic essentials are immediate notice of a potential claim and contact with the local judge advocate to arrange for a survey. Major difficulties arise when these requirements are disregarded.

h. As indicated above, the Admiralty Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately-owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

i. Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space of the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

j. Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

k. Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty Division, irrespective of whether a MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty Division and the Office of Counsel, MSC, as to how the incident should be handled.

1203 NAVY LIABILITY

a. This section sets forth the basis of governmental liability for damage caused by Government vessels or by other property under the jurisdiction of the Department of the Navy or damage caused by a maritime tort committed by an agent or employee of the Navy.

b. The old concept of the Government's sovereign immunity against liability for damage has long been abandoned in the admiralty field. Suits based on admiralty claims may be brought against the United States under either or both of the following Acts:

Suits in Admiralty Act, 46 U.S.C. §§741-752 (1970)

Public Vessels Act, 46 U.S.C. §§781-790 (1970).

c. The Suits in Admiralty Act prescribes a procedure for bringing suit against the United States on a claim which could be asserted in admiralty if a private person or a privately owned vessel, cargo, or other property, were involved. It provides that a complaint *in personam* may be brought against the United States in such cases, but that the Government vessel or cargo shall not be subject to arrest or seizure. As amended by Public Law 86-770 of 13 September 1960, the Suits in Admiralty Act now constitutes a broad waiver of sovereign immunity in the admiralty field. Therefore, whenever a suit in admiralty can be brought against a private party or vessel, a suit can be brought against the United States in like circumstances.

d. Supplementing the Suits in Admiralty Act is the Public Vessels Act, enacted in 1925. All naval vessels are public vessels and litigation in connection with damages caused by such vessels must proceed under the Public Vessels Act. This Act allows a complaint *in personam* in admiralty against the United States "for damages caused by a public vessel of the United States." This is primarily a tort liability.

e. There has been extensive litigation as to what constitutes "damages caused by a public vessel." The Department of Justice in early litigation took the position that the Government's liability was restricted to situations of physical contact or collision between vessels. Initial court decisions held that the Public Vessels Act could provide appropriate relief only in those admiralty cases dealing with property damage. The Supreme Court in *American Stevedores, Inc. v. Porello et al.*, 330 U.S. 446, 1947 A.M.C. 349(1947), held conclusively that the Public Vessel Act makes the United States also liable for damages involving personal injuries.

f. There has evolved a gradually expanding judicial concept of what constitutes damages caused by a public vessel. For example, the following situations, in addition to collisions or actual physical contact, are within the Public Vessels Act:

(1) Swell damage or wave wash.

(2) Damage to fish nets or traps, lobster pots, oyster beds, clam flats.

(3) Damage to commercial cargo carried in a Navy bottom.

(4) Personal injury or death of a civilian not employed by the Government (including longshoremen, harbor workers, repairmen, visitors, passengers, guests).

(5) Damage resulting from oil spills, paint spray or blowing tubes.

(6) Damage to third parties resulting from a fire or explosion on board a naval vessel.

g. There are, however, certain categories of individuals who do not come within the expanded scope of the Public Vessels Act. In the *S-51-CITY OF ROME* case, *Dobson, Administratrix v. U.S.*, 27 F.2d 807, 1928 A.M.C. 1583 (2d Cir. 1928), the Court of Appeals for the Second Circuit held that the system of benefits provided by the Government indicated a Congressional intent not to permit suits by naval personnel for injuries, death, or other damages resulting from negligence of public vessels. However, injuries to individuals on a privately owned vessel, as a result of collision with a naval vessel, are subject to suit under the Public Vessels Act.

h. Similarly, civil-service officers and seamen who man MSC vessels cannot maintain suit against the United States for personal injuries or illness, but are relegated to their remedies under the Federal Employees' Compensation Act, 5 U.S.C. §§8101-8150 (1970). This was decided by the Supreme Court in the *Johansen* and *Mandel* cases; both reported in *Johansen v. U.S.*, 343 U.S. 427, 1952 A.M.C. 1043 (1952). These personnel are, of course, employees of the United States.

i. Seamen who man the tankers operated by private contractors under MSC, pursuant to cost-plus-fixed-fee contracts, have the usual rights of merchant seamen in case of injury or illness, which include the right to bring suit against their employer for wages, maintenance and cure, and personal injury. It has been determined that the United States, as shipowner, though not the direct employer of the crew, is the proper party defendant in an action based on the Jones Act, 46 U.S.C. §688 (1970), for personal-injury damages; *Petition of the United States and Mathiasen's Tanker Industries, Inc.*, 289 F.2d 237, 1966 A.M.C. 1943 (3rd Cir. 1966).

j. In its original form, the Public Vessels Act provided a remedy for "damages caused by a public vessel." A 1960 amendment to the Suits in Admiralty

Act, the provisions of which are applicable to the Public Vessels Act, broadened the scope of the remedy to include all areas in the admiralty jurisdiction wherein suit could be brought if a private person, or a privately owned vessel, cargo, or other property were involved 46 U.S.C. §742, *as amended,* 46 U.S.C. §782 (1970).

k. While admiralty jurisdiction in the United States did not originally extend to damage caused by a vessel to a land structure, such as a pier or wharf, this situation was altered by the enactment in 1948 of long-pending legislation to bring such matters within the admiralty jurisdiction. This legislation, The Admiralty Jurisdiction Extension Act, 46 U.S.C. §740 (1970), brings the English and American concepts of admiralty jurisdiction into conformity on this point. The result is that the owner of a shore structure may now proceed *in rem* in admiralty against a vessel which damages his shoreside property. Therefore, with respect to damages caused by a naval vessel, the United States is liable to suit under the Public Vessels Act whether the damage takes effect on the water or on the land.

l. However, liability may also arise from damages caused by other property or by maritime torts. For such damages to come within the purview of this chapter, they must have commenced or occurred on navigable waters. The following are some examples of damages caused by other property, or by maritime torts committed by an agent or employee of the Navy:

(1) Damage caused by improper handling of pier fenders or camels, or by such fenders or camels which were floating free in a slip or harbor after breaking loose from their moorings;

(2) Damage to fishermen's nets or vessels caused by lost or sunken ordnance;

(3) Damage caused by negligent operation of airplanes, helicopters, and drones on navigable waters;

(4) Damage caused by improperly lighted, marked, or placed buoys or other such aids to navigation for which the Navy is responsible;

(5) Damage attributable to Government structures surrounded by navigable waters, such as artificial islands or structures which might not be lighted or properly lighted;

(6) Damage caused by negligence of Navy civil-service pilots to commercial ships at Navy installations;

(7) Damage to commercial ships caused by negligence of civil-service longshoremen;

(8) Damage to a commercial ship caused by Government personnel in the operation of a gantry or shoreside-operated crane or train.

m. Suits under the Public Vessels Act must be filed within two years after the incident on which the cause of action is based. If suits are not timely filed, the court has no jurisdiction to entertain them. This limitation cannot be waived administratively, nor is the running of the statutory period tolled by the filing of a claim with a Government department, nor by corresponding, nor by negotiation. The same two-year statute of limitations applies to the Navy's settlement authority, 10 U.S.C. §7622 (1970). A statement as to the nature of the Secretary of the Navy's settlement authority, setting forth these limitations, is usually included in the initial correspondence with claimants or their counsel. This avoids a possible future assertion by a claimant that he was misled as to his legal remedies or as to the statute of limitations.

n. Suits under the Public Vessels Act must be brought in the United States district court for the district in which the vessel charged with creating the liability is found within the United States, 46 U.S.C. §782. If the vessel is outside the territorial waters of the United States on the date the complaint is filed, the suit may be brought where the plaintiff resides or has an office. If the plaintiff does not reside or have an office in the United States and the vessel is outside the territorial waters, suit may be brought in any district.

o. When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement. Thereafter, the Navy assists the Department of Justice in preparing the case for trial, drafting suggested pleadings, and occasionally assisting at the trial itself. Payment of final decrees or of settlements negotiated by the Department of Justice, once a matter is in litigation, is made from that Department's settlement appropriation, if not in excess of $100,000. If greater than that amount, payment is made from a specially enacted judgement appropriation.

p. Although the Public Vessels Act is primarily a tort or negligence statute, it does include two instances of a contractual nature. Thus, suits may be brought under this Act for towage and for salvage services, including contract salvage, rendered to a public vessel of the United States. These would include salvage claims asserted by the crew of a privately-owned vessel.

1204 CLAIMS AGAINST THE NAVY

a. 10 U.S.C. §7622 (1970), as amended, by Public Law 92-417, 86 Stat. 654, provides settlement authority for "(1) damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy." The limit on the Secretary's settlement authority is a payment of $1,000,000. A claim which is settled for an amount over $1,000,000 is certified to Congress. Section 7622 now provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $10,000. Under the Secretary's delegation, settlements not exceeding $10,000 may be effected by the Judge Advocate General, Deputy Judge Advocate General, Assistant Judge Advocate General (Civil Law), and the Deputy Assistant Judge Advocate General (Admiralty). Authority has also been delegated to Commander in Chief, U.S. Naval Forces, Europe, and to Commander, Sixth Fleet, to pay admiralty claims against the Navy not exceeding $1,000.

b. The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

c. Where the amount paid is over $10,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for executed releases. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. §7622 are paid out of the appropriation "Claims, Department of Defense."

d. The Secretary's settlement authorization is subject to a two-year limitation. This limitation has been publicized in the Federal Register and now appears in title 32 C.F.R., Part 752. While this publication constitutes sufficient constructive notice, it is the practice in dealing with claimants to advise them at the outset of the two-year limitation, and that this limitation is not extended by the filing of claim nor by negotiations or correspondence. This procedure avoids any charge that claimants were misled as to their remedy or were permitted to believe that the filing of claim tolled the statute. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

e. To expedite settlements and to avoid long, drawn-out negotiation, in some situations a conclusion is reached in the Admiralty Division as to what is considered a fair settlement and one which would be approved under the authorization of the Deputy Assistant Judge Advocate General (Admiralty). That information is then conveyed to the claimant or counsel. The facts that authorization is available for a definite sum and that the claim does not require further approvals are very often effective in disposing of claims which would otherwise involve lengthy discussions.

f. Situations where the claimant is advised to forward his repair bill and that the Navy will "take care" of the matter are to be carefully avoided. They may serve as the basis of charges of an admission of liability by the Navy and may mislead claimants. Similarly, any informal, off-the-record assurances of probable recognition of a claim should be avoided.

Only the Secretary of the Navy, and his designee in matters not exceeding $10,000, may authorize settlement. Communications to claimants should state that they are "without prejudice" and do not constitute an admission of liability. This qualification, which is in keeping with admiralty practice, is to avoid possible prejudice in the event of litigation. Negotiations with a claimant should be handled only by the Admiralty Division or by a judge advocate, and all requests for information as to the status of admiralty claims should be referred to the respective admiralty officer handling the case.

g. In dealing with particularly involved cases, it is sometimes the practice to dispose of liabilities first and then deal with questions of damage. This procedure corresponds to the practice in litigated matters in admiralty where the district judge passes on the issue of liability. The case is then usually referred to a commissioner (normally an admiralty lawyer) to hear evidence on the issue of damage and to make a report to the court. Further proceedings are held on the basis of the commissioner's report.

h. In some situations in which repairs have been made, damages are not liquidated before the expiration of the two-year period. In such cases, it may be possible to settle on the basis of the estimated cost of repairs, thus disposing of the claim before the expiration of the statutory period. In other cases, settlements have been arranged on the basis of a percentage of provable damages, thereby eliminating the issue of liability and leaving the damages to be agreed on later.

i. However, unless a complete settlement can be approved before the statute of limitation runs, a claimant is well-advised to file a protective complaint. Settlement negotiations which had been underway at the time of filing of the complaint could then be continued with the Department of Justice representing the Government. Settlement short of trial on the merits could then be finalized by an offer of judgment and consent decree.

j. Certain claims arising in a foreign country can be handled either as admiralty claims or foreign claims. As indicated in section 2217 of this Manual, such claims are not to be handled as foreign claims without the authorization of the Judge Advocate General.

k. No admiralty claim file or related index card will reflect catalog information other than the name of the Navy property, type of injury, date of incident and Admiralty Claim Control number assigned the incident by the Admiralty Division. In no event will the name of any individual claimant or any other identifying particular be assigned to link that individual to the file or to an index system of any sort. Strict adherence to the foregoing precludes the creation of a "system of records" within the meaning of the Privacy Act of 1974 (5 U.S.C. § 552a), thereby freeing these files from the constraints of that Act but effecting the congressional mandate to protect the right of privacy of the individual.

1205 AFFIRMATIVE CLAIMS

a. The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. §7623 (1970), and is the reciprocal of 10 U.S.C. §7622 (1970), referred to in section 1204, *supra*.

b. The two settlement statutes were drafted to provide similar procedures for the two types of claims. Section 7623 was enacted to eliminate a question which had been raised as to the authority of the Secretary of the Navy to compromise and settle affirmative admiralty claims in the absence of an express statute. This statute also set at rest another question which had been raised as to the authority of the Secretary of the Navy to execute a full release of a claim on behalf of the United States and to deliver this release in exchange for payment. The form of release used is comparable to that used by the Maritime Administration with which admiralty practitioners are generally familiar.

c. The $1,000,000 limitation on settlement is the same as in claims against the Navy. The same delegation of settlement authority, in similar amounts, has been made by the Secretary of the Navy, with the exception that Commander in Chief, U.S. Naval Forces, Europe and Commander, Sixth Fleet do not have authority to settle affirmative claims. Amounts received in settlement of affirmative admiralty claims are paid into the Treasury of the United States, with one exception. Where the cost of repairs to damaged Navy property has been charged to an Industrial Fund, such fund will be reimbursed up to the amount which has been paid out of the fund. These credits are handled through the Admiralty Division.

d. 10 U.S.C. §7623 is a tort-claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

e. This Act also granted settlement authority with respect to damage to property for which the Department of the Navy has assumed an obligation to respond for damage. This provision related to subrogated claims which accrue in favor of the United States. An example would be where the Navy has leased a privately owned pier which is damaged by a commercial vessel. The Navy's obligation to respond to the pier owner for the damage gives it a right to recover from the party inflicting the injury. A similar situation exists where Navy property has been leased to private interests, under conditions whereby the Navy assumed the risk of loss or damage to such property.

f. Considerable difficulty has occasionally been experienced in handling matters of this latter type. The claims are often handled administratively in the first instance, either by the lessee of the property or by the office administering the lease for the Navy. If collection is not made, however, the cases are referred at a later date to the Office of the Judge Advocate General. Unless the rights of the Government have been adequately protected, such cases may encounter all the difficulties of "stale" claims. Frequently no notice of claim has been served on the vessel causing the injury or its agents. The requirement of survey has also often been overlooked, so that proof of damage may be very difficult.

g. To assist in collecting these claims for damage to leased property, it is necessary that action prescribed herein be taken as soon as possible after they arise. The Admiralty Division should receive prompt notice of any claims where recoupment could be handled under this statute. The local judge advocate also should be requested to assist in serving notice of claim on opposing interests, arranging a survey and preparing damage data. Close contact should be maintained between the District Judge Advocate and the local U.S. Navy Supervisor of Shipbuilding, Conversion and Repair, Public Works Officer, or other cognizant command or activity in order to assure early reporting of such casualties. The local judge advocate should always be informed of a situation where the Navy has a contract responsibility and where there is any possibility of an affirmative claim for damage caused by a privately owned vessel under 10 U.S.C. §7623.

h. The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the *res* or defendant and certain exemptions from legal process. 28 U.S.C. §§2415, 2416 (1970).

i. Survey is perhaps even more essential with respect to claims in favor of the United States. The Government as a claimant has the same obligation as a private claimant to give the offending party a chance to survey the alleged damage. Failure to afford an opportunity for survey results in a very heavy burden of proof upon the claimant to establish its damages. Survey procedure is discussed in section 1210, *infra*.

j. 10 U.S.C. §7623 does not apply to any claim where suit is filed. If the Admiralty Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

k. Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. §7365 (1970). Prosecution of such claims is handled in the first instance by the Assistant Supervisor of Salvage, U.S. Navy, Rm. 1313, 90 Church St., New York, N.Y. 10007. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. §7367 (1970). Salvage matters are further discussed in section 1214, *infra*.

1206 IMMEDIATE PRELIMINARY REPORT

a. Every incident involving a possible admiralty claim for or against the Government (as discussed in the preceding sections) must be reported immediately by rapid means to the Office of the Judge Advocate General (Admiralty Division). Such message should be forwarded to the appropriate naval district or area command to which a judge advocate is attached for information. These reports are in addition to, and not in lieu of, other reports which may be required by seniors in the chain of command and the Chief of Naval Operations. (*See, e.g.*, article 0743, U.S. Navy Regulations, 1973.) However, the report required by this section may be combined in appropriate cases with a report required by other directives, by making the Judge Advocate General and the cognizant judge advocate in the field addressees of the message.

b. The purpose of reporting a casualty to the local judge advocate is to permit him to take preliminary action with respect to civil liabilities and make arrangements for survey of the damage. Upon receipt of notice of a possible admiralty claim, the local judge advocate will assist forces afloat in the following ways:

(1) Arrange for a survey of the damage and provide for a qualified marine surveyor to represent the Navy.

(2) Indicate the extent of any investigation which may be required, so far as the civil liabilities are concerned, and advise and assist in such investigation if necessary.

(3) Conduct all dealings and negotiations with opposing interests when so directed by the Admiralty Division.

c. Any correspondence, letters of claim, or demands received by a commanding officer from opposing interests may be forwarded to the cognizant judge advocate or to the Judge Advocate General for handling and reply. All naval personnel are cautioned against giving statements to opposing interests or making any admission which might prejudice the Government's case.

d. Report control symbol JAG 5880-1 is assigned to this report.

1207 SUBSEQUENT INVESTIGATIVE REPORT

a. The preliminary message report, discussed in section 1206, *supra*, must be supplemented as soon as practicable by a further written investigative report covering the facts and circumstances of the casualty and including such documents, statements, photographs, and further data as may be required in the particular case. This written investigation report will be either a JAG Manual Investigation as defined in section 0201a(2) of the *JAG Manual*, or a letter report as set forth *infra* in this section. Discussion now follows on the general considerations which determine whether a JAG Manual Investigation or a letter report is appropriate.

b. A casualty of major importance or of a serious nature will normally be the subject of a JAG Manual Investigation fact-finding body. This decision is made by the cognizant convening authority pursuant to chapter II and section 0906 of the JAG Manual. When a JAG Manual Investigation is ordered, the report of the court of inquiry or investigation can also serve the requirements of the Admiralty Division and the local judge advocate with respect to civil liabilities. If the report is to serve such purpose, the investigating officer or body should make certain to include all information needed to handle potential claims which may arise from the incident. The local judge advocate can be of assistance in this regard by indicating points which must be developed.

c. When the report of a fact-finding body is meant to serve such a dual purpose, it is important that the Admiralty Division be informed immediately of the facts developed rather than waiting for the completion of the investigation. Potential civil liabilities must be dealt with promptly. The ability to adjust claims without litigation may be prejudiced by delays in the receipt of a report of investigation.

d. An advance copy of every report of investigation involving a possible admiralty claim should be forwarded directly to the Office of the Judge Advocate General (Admiralty Division) as soon as it is available. If appropriate, another copy should go to the local judge advocate. If it appears that the report will be delayed and that preparation of findings of fact, opinions, and recommendations will require some time, a copy of the evidence taken by the investigation should be forwarded as it is transcribed. This can be handled by instructing the reporter to prepare an additional copy of the testimony. The essential requirement is that the Admiralty Division get the basic testimony of the witnesses as soon as possible. In order to avoid litigation, many aspects of the civil liabilities will have to be dealt with before the investigative procedure has been completed.

e. Certain incidents of a minor nature will not require a JAG Manual investigation. In such event, a letter report must be submitted to the Judge Advocate General and, if appropriate, to the local judge advocate. The form in which a possible admiralty claim is reported is of less importance than the requirement that the circumstances and facts be completely and promptly developed. The distinction between a letter report concerning an Admiralty claim and a JAG Manual investigation, as defined in section 0201a(2), should be noted. Letter reports which are prepared solely for use in conjunction with Admiralty claims files should be cataloged, as should their file and cross index cards, as outlined in section 1204k

f. In some cases, the investigatory procedure may not cover matters of controlling importance in the determination of civil liabilities, since such factors may not be of primary interest in connection with the basic purpose of the investigation. Here, a supplemental investigative report and additional statements and affidavits may be required. In any event, it is of primary importance, in a case where it appears that litigation may ensue, to have a judge advocate participating in or guiding the fact-finding procedure. In this way, full development of the facts bearing on civil liabilities may be assured.

g. When dealing with investigations of collisions between naval and commercial vessels, personnel of the privately owned vessel will not be designated parties to the investigation or accorded rights as such. Such persons may, however, be invited to appear as witnesses and may be represented by counsel while testifying. Invitations to personnel of a merchant vessel to testify before a Navy investigation are usually declined on advice of counsel. If they do appear, however, neither a witness nor his counsel may be present when other witnesses testify.

h. Witnesses from the privately owned vessel are to be furnished a copy of their testimony before a naval investigation. This should be made a matter of written record, and the witness should be requested to advise of any errors in his testimony. This procedure increases the value of the record and its possible effectiveness in later litigation for impeachment purposes. In contrast, a typed copy of testimony which a witness has never seen and which is produced years later in an effort to impeach him is of little practical value. Opposing interests are not furnished a copy of the record of investigation or any information as to the testimony of naval witnesses.

i. An investigation, as distinguished from a court of inquiry, does not have subpoena power. Even in the case of a court of inquiry, it is usually not advisable to subpoena witnesses from a merchant vessel to testify in a case involving collision with a naval vessel. The fact that merchant marine personnel were required to testify before the Navy court would no doubt result in a motion to produce the record of the Navy inquiry in any subsequent litigation.

j. Report control symbol JAG 5880-2 is assigned to this report.

1208 WITNESSES

a. Procedures for furnishing naval records, witnesses, and data for use in litigation between private parties are set forth in chapter XIII of the *JAG Manual*. The procedure varies depending on whether a matter is in the litigation or prelitigation stage.

b. Section 1330 of the *JAG Manual* outlines the manner in which Navy records may be obtained in litigation between private parties through the use of a court order. It also establishes a more informal procedure whereby, upon the written request of all parties in interest or their counsel, naval records may be produced without a court order. Section 1324 indicates how naval personnel may be interviewed on behalf of private parties either before or during litigation.

c. In any suit under the Public Vessels Act, section 4 of the Act (46 U.S.C. §784) precludes the issuance of a subpoena in suits against the United States to personnel of a public vessel without the consent of the head of the department or activity of the Government which has control of the vessel. In such litigation, naval records, data, and witnesses are, of course, made available to the Department of Justice, which represents the interests of the Government. If naval witnesses are subpoenaed in private litigation, where the Government does not have interest, the provisions of sections 1320, 1321, and 1322 of the *JAG Manual* apply.

d. The attendance of naval witnesses is often requested at hearings conducted by the United States Coast Guard in connection with the investigation of marine casualties. The Coast Guard has investigative responsibility in marine casualties involving loss of life, violations of the navigation and inspection laws, and incompetence or misconduct of licensed and certificated personnel. The Coast Guard is interested in both the investigation of such casualties and in possible disciplinary proceedings against personnel who are licensed or certificated by the Coast Guard. A Coast Guard investigation may take place before an individual investigating officer or, in the case of a major casualty, before a marine board of investigation.

e. Only personnel who function under a license or certificate from the Coast Guard are subject to its jurisdiction. Naval personnel are exempt, as are those on public vessels. In most proceedings a right to cross-examine witnesses is afforded, and these Coast Guard hearings take on the aspects of a preliminary trial. Through the participation of counsel for the respective vessels, the facts of a marine casualty may be very thoroughly developed at such a hearing.

f. In collisions involving a naval vessel and a private vessel, naval personnel or employees may not be compelled to testify without the Navy's consent. If the Coast Guard requests the attendance of Navy witnesses, its request is normally addressed to the local judge advocate or the senior naval officer present. The final decision as to whether naval personnel will appear as witnesses at any Coast Guard hearing is made by the Office of the Judge Advocate General. The primary consideration in making this determination is the Navy's interest in the adjustment of its claims and litigation. No general rule will cover all cases. The determination of the Admiralty Division will depend on the circumstances of a particular case.

g. In the ordinary situation there exist factors which militate both for and against the production of Navy witnesses at a Coast Guard hearing. Production of the witnesses may subject them to searching cross-examination, resulting in full disclosure of the Government's case. The evidence will normally be of the same nature as would be brought out upon a subsequent trial before a Federal district court. Accordingly, if Navy witnesses are produced, it is essential that the interests of the Government be represented by competent admiralty counsel, either from a Navy legal office or from the Department of Justice, or both. Such counsel will assure that the Government is properly represented, both in examination of the Navy witnesses and cross-examination of the opposing party's witnesses.

h. Assuming that proper representation can be had, in certain cases it is advantageous for the Navy to make its witnesses available to the Coast Guard. After all aspects of a particular case have been brought out in a Coast Guard hearing, and each party knows the strengths and weaknesses of his own and his opponent's case, it may be easier to arrive at a settlement of the civil liabilities without resorting to litigation. Appearance of Navy witnesses before the Coast Guard should also effectively preclude any motion for discovery of the record of a naval investigation into the same subject matter. Where opposing interests have had an opportunity to cross-examine Navy witnesses at the Coast Guard hearing, it is unlikely that they can later show good cause for the production of the record of a naval investigation in a Federal district court.

i. The Navy's policy has been to assist the Coast Guard in carrying out its investigative functions by making naval personnel available as witnesses where no injury to paramount Navy interests is involved. Where no civil liabilities are involved or where they have been disposed of by settlement, naval personnel can, of course, be made available in any case as a matter of cooperation. In some cases, copies of the Navy's reports or records may serve the requirements of the Coast Guard without the necessity for the appearance of witnesses. In such event, the record may be turned over on condition that it be used exclusively for the purposes of the Coast Guard and not be made a part of the public Coast Guard record, which would also make it available to private interests. If settlement of the civil liabilities can first be made, this will also permit production of Navy witnesses at a later date, although the initial request may have to be refused.

j. These considerations do not exist where a naval vessel is in collision with a Coast Guard, Maritime Administration, or other Government vessel, where no civil liabilities can be asserted. This section, also, does not have any application to investigations conducted by the Navy. In addition, it applies only in part to the naval tankers which are manned by civilian crews, who are hired by the shipping company which operates the tanker under contract with the Navy. While such personnel hold licenses or certificates issued by the United States Coast Guard, the Coast Guard's investigatory jurisdiction does not extend to casualties involving these vessels (46 C.F.R. §§136.03-40, 136.11-1). By agreement, however, the Coast Guard does investigate these casualties unless specifically requested not to do so by MSC (COMSCINST 3121.3C, p. 1-79). The decision of whether to request the Coast Guard not to conduct an investigation of a collision with a commercial vessel is made on a case by case basis by COMSC after consulting with JAG. In those situations where these civilian crew members are summoned to appear before the Coast Guard, notice must be sent to the Office of the Judge Advocate General (Admiralty Division). The Admiralty Division will then arrange for legal representation to protect the interests of the Government in the claims arising out of the incident.

k. A basic consideration in determining whether to make Navy personnel or employees available to the Coast Guard is the preservation of the position of the United States in litigation. Subject to this consideration, all possible assistance and cooperation are afforded in admiralty matters to any Governmental investigating unit. In sum, because of the various considerations involved, all requests for the appearance of Navy witnesses at Coast Guard hearings, whether the case apparently involves a naval vessel or not, should be referred to the Admiralty Division for determination.

l. The same policy applies to hearings before the Panama Canal authorities, and before investigating bodies of foreign countries. Each case must accordingly be decided on its individual merits.

1209 DOCUMENTS

a. United States district courts attach particular importance to original documents of first entry in admiralty matters. Their preservation is absolutely necessary in collision cases.

b. Basic documentary data are to be forwarded to the Judge Advocate General (Admiralty Division) as soon as practicable after a major collision. If a matter is being investigated by a fact-finding body, such data are also required by that body. These requirements can be met by attaching photostatic copies of pertinent documents to the record of the investigation, while the originals are sent forward directly to the Admiralty Division as soon as copies have been made. If an essential original document is not available at a trial, the Government's position in litigation may be materially prejudiced. Therefore, it is most essential to prepare and retain photostatic copies of pertinent records as a safeguard against loss during transmission.

c. To avoid having original Navy logs held for a long period of time or attached to court records in litigation, it is the practice for the Admiralty Division to prepare certified photostatic copies. This procedure avoids the necessity for introducing the original logs into the court record. The original record sometimes is required at the trial, however, for the purpose of comparison, especially where there is any issue of alleged alteration or erasure in the document. The original log is for inspection purposes only and does not become a part of the court record.

d. Everyone should be familiar with the requirement that no erasures be made in a logbook or any original navigation record. If any entry must be corrected, the original is to be lined through in such a manner that it is still legible and the correction inserted so that no question arises as to the nature of the original entry. Both the original entry and the correction should be initialed by the person making the entry.

e. Where navigational data are first recorded in a notebook or on individual sheets of paper, before their entry in a log or in a quartermaster's notebook, these records of first entry must be preserved and forwarded. Conflicts between the times of entries in the quartermaster's notebook, deck log, and engineroom records cause frequent difficulty in litigation. To avoid such issues arising out of a difference between bridge and engineroom clocks, a record of comparison of such clocks should be made as soon as possible after a collision or other casualty. On vessels equipped with a course recorder, this device should also be compared with bridge and engineroom

clocks, and discrepancies noted. Where a fathometer was in use, the same applies.

f. Radar records have assumed an increasing importance in recent years by reason of court decisions holding that a vessel is chargeable with the knowledge which her radar would have disclosed if it had been efficiently used. Consequently, radar records or logs must be carefully preserved. If a vessel's radar was in operation but no written record was being maintained, a detailed statement of the radar operator should be immediately prepared, with particular emphasis on times, ranges, and bearings.

g. Not all original logs and records will be relevant in every case. Although all such records would probably be of importance in a major collision, some of them would contain no information of value in a case of minor damage to a shore structure. Depending on the circumstances of the particular case, the following are among the original records which must be preserved and forwarded to the Admiralty Division:

(1) Quartermaster's Notebook.

(2) Smooth Deck Log.

(3) Bell Book.

(4) Engineering Log.

(5) Chart in use.

(6) Bearing Book.

(7) Magnetic Compass Record.

(8) Deviation data, azimuth records, and course recorder record.

(9) CIC Logs.

(10) Radar Logs.

(11) DRT plot (place or course recorder).

(12) Radar Plot.

(13) Communication and Signal Logs.

(14) Voice Radio Log.

(15) Night Order Book.

(16) Fathometer Record.

h. Although photographs do not constitute original documentary data, they are an extremely valuable adjunct to an investigation. The Department of Justice has repeatedly emphasized their value in litigation. In collision cases, photographs which indicate the angle of collision and extent of damage are most valuable. They are also essential in personal-injury litigation where there is an issue of alleged defects in a vessel's tackle, gear, or appurtenances. Many ships have an officially designated ship's photographer. In peacetime, officers and crew members are normally permitted to retain cameras. After a collision, the ship should be canvassed for persons who may have taken relevant pictures.

i. The value of a photograph increases with its nearness in time to the incident involved. Where photographs are taken there must be recorded on the reverse side of the prints or elsewhere the hour and date the photographs were taken; a detailed description of the location or area photographed; the name, rate, and social security number (SSN) of the photographer; and the names and addresses of the persons present when the photographs were taken. Care should be taken to preserve the negatives. These requirements are important in order that the photographs can be properly authenticated and identified by witnesses for possible use in litigation.

1210 SURVEYS

a. Surveys both of a naval vessel and of a privately owned vessel involved in an incident are absolute essentials in the Navy's admiralty-claims procedure. The requirement applies not only to collisions but also to any maritime incident involving potential Government liability for property damage as outlined in section 1203, *supra*, and to damage caused by a privately owned vessel to Navy property as outlined in section 1205, *supra*.

b. The Navy's survey procedure follows a practice of long standing in the commercial maritime field. It is designed to eliminate burdensome and difficult questions of proof of damage. The difficulties of proving vessel damage where no survey has been held are well illustrated in the Commissioner's Reports in the *CHICAGO-SILVERPALM* and *EVANSVILLE-MARBLEHEAD* cases; *U.S. v. M/S SILVERPALM*, 1937 A.M.C. 498 (N.D. CAL 1937); *U.S. v. SS EVANSVILLE*, 1941 A.M.C. 62 (E.D.N.Y. 1940). The primary purpose of a survey is to eliminate later controversy as to the items of physical damage caused by a collision. Failure to afford opposing interests an opportunity to survey collision damage places a very heavy burden of proof on the party later seeking to establish such damage. *See, Patton-Tully Transportation Company v. Barrett*, 37 F.2d 516, 1930 A.M.C. 970 (C.A. 6 1930); *THE WESTCHESTER*, 254 Fed. 576 (C.A. 2 1918).

c. The survey practice discussed here is the formal, technical, joint survey held by representatives of the two (or more) parties involved. It is not a mere *ex parte* appraisal, such as may be used in determining the extent of damage in the Navy's investigatory procedure or in connection with the disposal of naval material. Each party normally appoints its own surveyor who, with the other surveyors, examines the damage and attempts to reach agreement as to the extent of damage resulting from the casualty. The survey report lists the items of damage and the recommended repairs. Where all parties are in agreement, the practice is that all surveyors sign the report in order to record their concurrence as to the items of physical damage. Surveyors normally sign without prejudice as to liability. If there is disagreement as to certain points, those points are specifically noted. No surveyor subscribes to any statement in the survey report with which he is not in accord.

d. In some situations, the surveyors may also agree as to the reasonable cost of repairs. In the repair of privately owned vessels, the damage may normally be measured by the reasonable cost of repairs in commercial yards. Where naval vessels are repaired in naval shipyards, the cost cannot be determined in advance. Therefore, it is not the practice for the Navy surveyor to attempt to reach any agreement as to Navy-yard costs, since the work is not being carried out on a commercial basis. The surveyor may, however, submit an independent memorandum of his estimate of reasonable repair costs if the work could be done in a commercial yard.

e. It is important that the surveyor check the repair work as it is accomplished. The question of whether collision damage necessitated a vessel's withdrawal from service may be controlling on the right to recover reimbursement for detention. If other work is being performed concurrently with collision repairs, the nature, time consumed, and necessity for such other work should be reported. These factors are of controlling importance in determining whether a detention claim exists. The surveyor should also furnish his opinion as to whether repairs were accomplished within a reasonable length of time and, if not, the excess involved.

f. In many situations, after the survey is held, specifications will be prepared on the basis of the survey report, bids will be obtained, and the surveyor will approve the lowest bid as fair and reasonable. For all practical purposes, this liquidates the collision repair costs. Where work is not performed under competitive bids, the repair bills submitted by a claimant should be furnished to the Navy's surveyor for his comment as to the reasonableness of the repair costs.

g. Surveys should be held as soon after the collision or casualty as possible. Where a naval vessel has suffered damage, notice of survey at a designated time and place should be served on the local agent for the merchant vessel, or on the master if there is no local representation. Notice of survey is often given orally or by telephone, and later confirmed by letter. Due to vessel movements, survey must often be arranged on very short notice, but as much time as possible must be afforded opposing interests to arrange for attendance. Where such time is not given to the Navy, attendance can be accompanied with a reservation of objections due to inadequate notice.

h. In areas served by a district legal office, the admiralty officer will normally make all arrangements for the survey including notification to opposing interests. However, it is the responsibility of the commanding officer to insure that a survey is held.

i. The Navy's survey procedure is normally accomplished under a standing contract between the Navy and United States Salvage Association, Inc. The Salvage Association is a nonprofit service organization, primarily representing American marine underwriters. It has contract arrangements in other foreign areas, so that its representation is worldwide.

j. The Admiralty Division of the Office of the Judge Advocate General and naval district and area judge advocates have authority to request surveys under the Salvage Association contract. Commanding officers or masters of naval vessels involved in collision can meet the requirement for survey by asking the Judge Advocate General (Admiralty Division) or the nearest Navy judge advocate to act under this authorization. The Navy does not have authority to employ commercial surveyors outside the Salvage

Association contract; all services of this nature must be performed under the contract. Where the nearest representative of the Salvage Association is not known, a message should be sent to the Judge Advocate General (Admiralty Division) requesting that arrangements for survey be made. The Admiralty Division will then get in touch with the home office of the Salvage Association, which will instruct its local representative to act.

k. In some instances, the Salvage Association represents underwriters of a commercial vessel which has been in collision with a Navy vessel. When such a circumstance arises there are three possibilities concerning Navy representation at the survey. These alternatives are listed in order of preference in diminishing the possibility of a conflict of interest:

(1) The Salvage Association should be requested to obtain the services of an independent marine surveyor who will represent the Navy.

(2) The Salvage Association can send two of its own surveyors to the survey, one to represent opposing interests and one to represent the Navy.

(3) If neither of the above is possible, it may be necessary to obtain the services of the best qualified naval personnel or employees in the area to act as surveyors on behalf of the Government.

l. Where the Salvage Association or independent surveyors are not available to act for the Navy, experienced personnel from a naval shipyard, supervisor of shipbuilding, conversion and repair, ship repair facility, or MSC maintenance and repair department, may be used. Because surveys may be held on very short notice, the local judge advocate must ascertain by advance inquiry what qualified personnel are available in the area to represent the Navy when the Salvage Association cannot act. Any questions as to Navy representation at marine surveys which cannot be resolved on the local level should be taken-up by telephone or message with the area or district judge advocate or with the Admiralty Division.

m. Survey reports are normally sent to the area or district judge advocate who initially requested them and whose office then transmits them to the Admiralty Division. The Salvage Association bills the Judge Advocate General periodically for its services. Where the Salvage Association has obtained an independent surveyor to act for the Navy, such surveyor bills the Salvage Association for his fee. The Salvage Association then includes this item in its periodic billing to the Navy.

n. Survey services are also provided to the Department of the Army and Department of the Air Force under the Navy's contract with the Salvage Association as a matter of cross-servicing. The Army and Air Force will request such services through the appropriate Navy judge advocate. The fees for such Army and Air Force surveys will also be billed to the Navy.

o. In cases where damage is claimed to have been caused by a naval vessel, the claimant should be informed that the Navy requests an opportunity to survey the damage as soon as possible. A lapse of time between the casualty and the survey raises the possibility that other damage may have occurred in the interval. Therefore, the cognizant judge advocate should make the request for survey a matter of record in cases where a claim has been made or obviously will be made against the Government. Although the burden is on the private interests to make their vessel available for survey, it is considered preferable for the cognizant Navy judge advocate to make the request in any event, rather than relying on the burden of proof imposed on the claimant for failure to afford an opportunity for survey.

p. Whether or not there is a formal survey, it is incumbent on the Government or the private claimant to establish its damages by the testimony of witnesses. This testimony must first prove what items of damage were in fact caused, the repairs recommended to correct that damage, and the repair specifications and job orders issued authorizing performance of the recommended repairs. Additional witnesses, usually from the repair yard, must then establish that the repairs as authorized were performed and their cost. Full adherence to the survey procedure set forth above substantially reduces the expense and difficulty in establishing a damage claim or defense of a damage claim. For this reason, it is of great importance that these procedures be followed in any admiralty matter in which the Navy is interested.

q. Depending on the identity of the foreign sovereign involved in the particular incident, admiralty survey procedures may apply to collisions between U.S. Navy ships and foreign naval or public ships. In cases where claims can be legally asserted, it has been determined for policy reasons that, in certain special situations, joint survey exchanges will not be held without prior specific approval. OPNAV

Instruction 3040 series establishes policy in such cases. Where doubt exists, advice should be sought from the Judge Advocate General (Admiralty Division).

r. In certain cases survey of a naval vessel or property or parts thereof would result in disclosures of classified information. If this is the case, opposing interests should be notified in writing that, for this reason, survey of the naval vessel or certain parts thereof cannot be permitted. However, every opportunity for a complete survey should be afforded to private interests, if at all possible.

1211 WAIVERS

a. This section deals with collisions between vessels, both of which are owned by the United States and operated by different Government departments. It also applies to damage to property of other Government departments caused by naval vessels. Such claims are subject to waiver. The existence of the waiver is based upon decisions of the Comptroller General to the effect that appropriations of one Government department are not available to pay claims of another. This principle has also been applied by the Comptroller General in a decision involving a Government corporation which obtained its revenues from its operations rather than from Congressional appropriations. *See, Inland Waterways Corporation and Defense Plant Corporation*, 25 Comp. Gen. 49 (1945).

b. Where it appears that only Government interests are involved, investigation with respect to civil liabilities and surveys is not required. The status of the respective vessels is confirmed by correspondence between the Admiralty Division and the other Government agency, and the existence of a waiver is made a matter of record. It is as important to avoid unnecessary labor and expenditure in matters subject to waiver as it is to observe the necessary requirements of investigation and survey where there is no waiver. If there is any doubt as to the status of the other vessel or property, advice should be requested from the Judge Advocate General (Admiralty Division) by rapid means.

c. The situation as to Maritime Administration vessels may cause some confusion. During World War II, by reason of the chartering arrangements and the waiver clauses contained in the WSA (War Shipping Administration) charter party, collisions between naval vessels and all vessels controlled by the WSA (even if privately owned) were waived. That situation has changed materially, and the mere fact of Maritime Administration ownership is not now conclusive. Many Maritime Administration vessels are now operated under bareboat charter. The bareboat charterer is privately insured, and these situations are treated as if the vessel were privately owned.

d. Only where the vessel is operated for the account of the Maritime Administration under a General Agency Agreement is the claim now subject to waiver. This general statement is subject to a further qualification where a Maritime Administration vessel, operated under General Agency Agreement, damages a Navy shore structure. Such claims are paid by the P&I (protection and indemnity) underwriters of the Maritime Administration vessel and are not waived. The interdepartmental waiver applies only to the marine insurance or hull damage type of claim.

e. In addition to inter- and intradepartmental waiver situations involving United States public vessels only, other incidents involving such vessels and the public vessels of certain foreign governments may be subject to waiver.

1212 FOREIGN GOVERNMENT CLAIMS

a. A nation's public war vessels are not subject to jurisdictional process in any other nation. The Supreme Court of the United States has applied the same doctrine to foreign government-owned merchant vessels, *Berizzi Brothers Company v. SS PESARO*, 255 U.S. 216, 1926 A.M.C. 958 (1926). However, a later decision, *Republic of Mexico v. Hoffman*, 324 U.S. 30, 1945 A.M.C. 277 (1945), suggests that restrictions may hereafter be imposed upon the immunity of government-owned merchant vessels which are employed in competive commercial transactions.

b. Ordinarily the courts give controlling weight to the guiding policy of the executive branch of the Government as to whether immunity should be allowed. Current State Department policy adheres to the "restrictive" theory of sovereign immunity rather than the "classical" or "absolute" theory. The restrictive theory recognizes the immunity of the sovereign with respect to sovereign or public acts of a state, but not with respect to private acts of a commercial nature. *See*, Department of Justice policy letter of 19 March 1973. *See also*, *U.S. v. Tug*

PEMEX XV, 1960 A.M.C. 896 (S.D. TEX 1960) and the so-called "Tate Letter," 26 Dept. of State Bull. 984, 1960 A.M.C. 898 (1952).

c. The United States has waived immunity from arrest of its merchant vessels in foreign countries but not the immunity from arrest of United States naval vessels. If an attempt were made to arrest a naval vessel in a foreign country, the Department of State, at the instance of the Department of Justice, would be requested to file a suggestion of Government interest, and to obtain release of the naval vessel.

d. During World War II many governments requisitioned their merchant vessels. Litigation between the Allies arising out of collisions of their public vessels, apart from its general undesirability, was impracticable since the vessels were immune from arrest. Accordingly, the United States entered into a series of "knock-for-knock" or waiver agreements with the British, Norwegian, Australian, and Canadian Governments, whereby intergovernmental-maritime claims were waived. The test was the ultimate interest of the government concerned. That is, if the loss was one which the government would ultimately bear, the claim was subject to waiver. Salvage claims and general-average matters were also waived.

e. At the present time there are waiver agreements in effect with the British and Canadian Governments, Maritime Transportation and Litigation Agreement with Great Britain, 4 December 1942, 56 Stat. 1780, E.A.S. 282 and Waiver of Claims Involving Government Ships Agreement with Canada, 15 November 1946, 61 Stat. 2520, T.I.A.S. 1582. Under these agreements, all maritime claims that would otherwise lie between the Governments of the United States on the one hand and of Great Britain and Canada on the other, and which arise out of the operation of the public vessels of these respective Governments, are waived. Such cases do not require, for claims purposes at least, the usual investigation and survey.

f. In addition, waiver is provided for in the North Atlantic Treaty Status of Forces Agreement and in the Status of Forces Agreement with Japan. Under Article VIII of the former, intergovernmental admiralty claims for damage to property owned and used by the armed services of one contracting party caused by a vessel of another contracting party are waived, provided that either the damaging vessels or the damaged property was being used in connection with the operation of the North Atlantic Treaty. Under Article XVIII of the Agreement with Japan, the United States and Japan have similarly provided for mutual waiver of claims for property damage caused by members of their defense forces, provided that either the damaging instrumentality or damaged property was being used for official purposes. Similar waiver provisions are contained in the Status of Forces Agreement between the United States and the Republic of Korea.

g. In those cases where an admiralty claim can legally be asserted against a foreign government in other than the situations described herein, prompt notice and investigation procedures remain the same. For procedures regarding survey, see section 1210(q) *supra*.

1213 PERSONAL INJURIES

a. Claims for personal injury and death are assuming increasing importance, both with respect to the expanding volume of such litigation and the larger amounts recovered. In many instances, suits have been filed without any prior notice of claim or any previous report of the incident. This is particularly true where injuries to shoreside workers and longshoremen have been involved.

b. As indicated in section 1203, *supra*, claims for personal injury and death suffered on a naval vessel or caused by a naval vessel or by other property under the jurisdiction of the Department of the Navy, or caused by a maritime tort committed by an agent or employee of the Navy, are subject to suit under the Public Vessels Act. Such claims are also within the Navy's settlement authorization. The same requirements of immediate reporting and investigation apply. The exclusive remedy for civilian employees, including officers and seamen on public vessels, is the Federal Employees' Compensation Act, *Johansen v. United States*, 343 U.S. 427, 1952 A.M.C. 1043 (1952). Injuries to civil service officers and seamen who man MSC vessels are not reported to the Judge Advocate General, but should be reported to the Industrial Relations Division of MSC. However, longshoremen, harbor workers, repairmen, guests, visitors, and dependent passengers are among the categories of persons who may file suit under the Public Vessels Act for their injuries, and it is with these classes of claims that this section is concerned.

c. In all cases of personal injury, after first aid has been rendered, a paramount consideration is immediate physical examination. This examination should be as thorough and detailed as possible under the circumstances. Upon request, a copy of the report of examination, X-rays, photographs, and tests made by the Navy may be furnished to the injured individual. If the injured party declines to submit to a physical examination, this should be made a matter of record by means of a communication addressed to him. Where the exigency of the situation requires, medical treatment in addition to first aid is furnished by the naval vessel or the naval facility involved. Apart from humanitarian aspects, any failure to furnish immediately-required medical service which is not otherwise available would prejudice the defense of a subsequent suit for personal injury.

d. In addition to the usual reports and investigation, any naval vessel on which a person has been injured should have the occurrence entered in her log. Statements should be obtained from all eyewitnesses if possible. Longshoremen and repairmen may be reluctant to give such statements, particularly where one of their fellow workers is involved. In such event, a record should at least be made of the complete names, addresses, and badge numbers of all workmen who saw the casualty, as well as of other members of the group with which the injured man was working. If any naval personnel or Government employees were witnesses, detailed statements should be taken from them.

e. Since liability may be predicated only on negligence of the vessel, a most careful and detailed examination must be made of the locality of the accident. This provides evidence as to the condition of the particular area or apparatus involved for use in possible subsequent litigation. Photographs should also be taken as soon as possible after the accident showing the area where it occurred and the gear or tackle involved. When photographs are taken, notations should be made to permit their identification and to show the circumstances under which they were obtained. The same requirements apply to injuries received by persons ascending or descending a brow, gangway, or accommodation ladder, or to injuries to persons on the dock or pier as a result of events taking place on board the vessel. If the injury has resulted from the failure or giving-way of any of the vessel's gear or equipment, such gear should be carefully preserved where feasible.

f. A trend aimed at expanding Government liability is beginning to emerge in the area of third-party practice. Whereas in direct actions naval personnel and civil service employees traditionally have been held to be barred from suing the Government for personal injuries [the former under the rationale of *Dobson v. United States*, 27 F.2d 807 (2d Cir. 1928), and the latter under the Federal Employees' Compensation Act (5 U.S.C. §§8101-8150)], the question of whether the United States may be impleaded by a joint tort-feasor under circumstances where a direct claim would be barred by the foregoing authorities is unsettled. The U.S. Court of Appeals for the Ninth Circuit, in *Wien Alaska Airlines, Inc. v. United States*, 375 F.2d 736 (9th Cir. 1967), and *United Airlines v. Wiener*, 335 F.2d 379 (9th Cir. 1964), has held such claims for noncontractual tort indemnity against the United States to be barred. The Fourth Circuit, however, has adopted the contrary view, apparently permitting plaintiffs to do indirectly what they could not do directly, *Wallenius Bremen G.m.b.H. v. United States*, 409 F.2d 944 (4th Cir. 1969). A similar result may obtain when the United States voluntarily intervenes to recover medical expenses under the Medical Care Recovery Act (42 U.S.C. §§2651-53). *Nikiforow v. Rittenhouse*, 319 F. Supp. 697 (E.D. PA 1970).

g. The problem becomes more complex where the cause of action is based on product liability rather than simple tort. Product-liability cases are premised not merely on the theory of simple tort but on concepts of warranty related to the Government's participation in the design phases of manufacture of the product involved.

h. The normal procedures prescribed for reporting and investigating admiralty incidents are adequate for the purposes of handling product-liability cases. The preceding brief discussion of the new emphasis on product-liability cases is intended to bring about an awareness of this area of potential liability and the active investigation of cases which might otherwise, because they involve only civil servant personnel, go without proper investigation.

i. As previously mentioned, persons traveling in naval vessels, other than military or civil service personnel, may maintain a cause of action for injuries sustained on board. Such transportation is usually without benefit of defenses which may be contained in steamship tickets issued by commercial shipping lines. Therefore, the Navy cannot avail itself of contract defenses which may exist in favor of steamship companies in such matters. Without such clauses in the ticket, there is no requirement for immediate notice of claim. The two-year statute of limitations of the Public Vessels Act would normally apply, unless a shorter statute of limitations may be invoked under the doctrine of laches.

j. Personal-injury suits are usually very difficult to defend and recoveries may involve large sums. It is therefore imperative that the following essentials be met:

(1) Immediate medical examination and report of treatment-record results.

(2) Message report to the Judge Advocate General (Admiralty Division) (except in case of minor injury to military dependents, for which air mail will suffice).

(3) Names and addresses of all witnesses and statements if possible.

(4) Examination of the locality and apparatus involved to meet any issue of alleged negligence of the vessel (make record of results).

(5) Photographs of the locality and conditions involved.

(6) Preservation of any gear or equipment which has failed.

(7) Appropriate log entries.

1214 SALVAGE

a. This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. §7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

b. When a naval ship renders salvage assistance, the resulting claim against private interests can also be administratively settled by the Secretary of the Navy pursuant to 10 U.S.C. §7365. Such affirmative salvage claims are reported to and processed by the Assistant Supervisor of Salvage, USN, Rm. 1313, 90 Church St., New York, N.Y. 10007. (See NAVSHIPS Instruction 4740.4C of 17 February 1970.) They are referred to the Judge Advocate General (Admiralty Division) only if the Assistant Supervisor of Salvage is unsuccessful in making collection. The Government also has the inherent right to sue in order to enforce its salvage claim. *THE WESTERN HOPE – THE IMPOCO*, 287 F. 400, 1923 A.M.C. 82 (S.D.N.Y. 1922); *THE ODENWALD*, 71 F. Supp. 314, 1947 A.M.C. 666 (D.C.P.R. 1947), *aff'd*, 168 F.2d 47, 1948 A.M.C. 888 (1948).

c. Admiralty law gives the crew of a salving vessel a share of the salvage award. A civilian crew which assists in salving a naval vessel has a cause of action against the Government separate and distinct from that of the vessel owner. Uniformed naval personnel, however, are precluded by administrative policy from maintaining suit for salvage services performed as part of their official duties. In processing affirmative claims, the Supervisor of Salvage asserts claims for the Navy on a per diem basis as owner of the salving vessel, including the services of Navy crew members.

d. The *ODENWALD* case may be regarded as a special situation so far as naval personnel are concerned. In that case, the Secretary of the Navy with Presidential approval directed that suit be filed against the German vessel *ODENWALD* on behalf of the United States and the naval personnel involved. That was an unusual situation, but it did not indicate any departure from general administrative policy. The particular case was discussed in the November 1947 issue of the *JAG Journal*. Thus, while civilians who salve a naval vessel have a cause of action against the Government, naval personnel are generally precluded by governmental policy from filing suit for salvage services rendered to commercial vessels.

e. The compensation to which a salvor is entitled generally consists of two parts. First, there is reimbursement of his expenses such as cost of labor and materials expended. Secondly, there is a bonus or a reward, the size of which depends upon many factors and varies from case to case, *THE BLACKWALL*, 77 U.S. 1 (1869). The amount of the award, however, is something less than the salved value of the property.

Life is less highly rewarded than property under the American law of salvage; that is, a salvor of life is only rewarded out of the value of property salved. If no property is salved, there is no award. Subject to this limitation, salvage awards tend to be liberal so as to encourage others to risk their ships and their lives to save property from the perils of the sea. As explained below, the Navy generally does not present its claim on a bonus basis.

f. The Assistant Supervisor of Salvage, USN, normally presents Navy salvage claims on a per diem basis. This practice of charging a daily rental is a matter of administrative convenience and policy insofar as the Supervisor of Salvage is concerned. In those cases where property is salved, however, that policy does not preclude the Government from asserting its legal right to claim on a salvage-bonus basis. Regulations concerning Navy affirmative salvage claims have been published in the Federal Register and in the Code of Federal Regulations, 32 C.F.R. Part 754.

g. The presence of uninsured Government cargo in a privately owned ship assisted by Navy salvors also gives rise to problems in general average which must be considered in the handling of affirmative salvage claims. These matters also are dealt with by the Assistant Supervisor of Salvage, New York.

h. Possible claim for damage to a privately owned ship during salvage operations also needs special consideration. In some instances, shipowners have sought to offset the Navy per diem charges in whole or in part with claims for damage to their ship caused by the salving naval vessel or her personnel. In such cases, the per diem charge is withdrawn and the Navy's claim reasserted on a salvage-bonus basis. In other instances, the shipowner has paid the per diem salvage charge, and then, without prior notice, claims for damage to his ship on a tort basis. By such time, the prior settlement of the salvage claim has precluded any claim for a salvage-bonus award. To avoid this possibility, settlement of a Navy salvage claim is normally conditioned upon a release of any claim for damage to the private ship incurred during the salvage operation.

i. In any instance of damage, claimed or actual, to a private vessel during a Navy salvage operation, commanding officers and judge advocates should immediately arrange for survey and follow the necessary reporting and investigative procedures. Depending on the circumstances, such claims may fall either within the settlement authorization of 10 U.S.C. §7622 administered by the Judge Advocate General or 10 U.S.C. §7365 administered by the Supervisor of Salvage.

j. In many cases, a separate "finder's reward" may be paid for information leading to the recovery of certain types of ordnance or oceanographic equipment. Provisions for these payments may be found in NAVORDINST 8500.1 series and NAVOCEANINST 7240.2 series, respectively.

1215 TOWAGE AND PILOTAGE

a. There are situations where the Navy performs towage or pilotage for privately owned vessels, other than services rendered in conjunction with salvage operations discussed in section 1214, *supra*. While towage and pilotage services are often rendered concurrently, a vital distinction between the two should be recognized. This distinction is especially important when considering the questions of liability for damage caused by negligent towing (including tug assistance to a vessel) or negligent piloting.

b. Where towage or pilotage is performed by commercial firms, they usually attempt to exempt themselves from liability for negligent pilotage by contract. Therefore, it is recommended that, whenever feasible, Navy pilotage be performed only upon execution of the suggested contract illustrated in Appendix A-12-a.

c. These contractual exemptions from liability have, to a great extent, been successful in pilotage situations. On the other hand, the courts have consistently held as invalid those clauses attempting to contract away liability for negligence with respect to towage.

d. For many years towing companies inserted a provision in all towing contracts stipulating that towage would be solely at the risk of the towed or assisted vessel. The intent was, of course, to immunize the tug from liability for any negligence in performing the towage. This exculpatory clause was held invalid by the Supreme Court as being contrary to public policy. *Bisso v. Inland Waterways Corp.*, 349 U.S. 85, 1955 A.M.C. 899 (1955).

e. Another clause of this type of towing contract, referred to in the *Bisso* case, sought to make the master, crew, and employees of the tug, the "servants" of the tow. Naturally, this clause, if upheld, would relieve the tug of liability for negligence. The Supreme Court made short work of the "fictitious employment" clause and struck it down. *Bisso, supra,* at 94-95. For the most part, these decisions are in conformity with the general principle that one cannot contract away liability for his own negligence.

f. Exculpatory clauses in pilotage contracts, however, have been treated more generously by the courts. The courts have justified the distinction between towage and pilotage exemption clauses on the basis of the unique position occupied by pilots. "Under law and custom they have an independence wholly incompatible with the general obligations of obedience normally owed by an employee to his employer." *Bisso, supra,* at 93-94.

g. Commercial pilotage contracts contain a clause providing that the "pilot" (often the captain of one of the assisting tugs) becomes "the servant of the owners of the vessel assisted." An early decision supports this concept of a "borrowed servant," and serves to immunize the towing company from liability to the tow for damage caused to the latter by the pilot's negligence. *Sun Oil Co. v. Dalzell Towing Co.,* 287 U.S. 291, 1932 A.M.C. 149 (1932).

h. Cases involving damage to a third party as a result of negligent towage or pilotage present special problems. The contract format illustrated in Appendix A-12-a reflects the results brought about by several court decisions. *The Beatrice,* 161 F. Supp. 136, 1958 A.M.C. 1612; *aff'd,* 275 F.2d 209, 1960 A.M.C. 1408 (2d Cir. 1960).

i. Because of the varying attitude of the courts, which on one hand have upheld exculpatory language in a commercial pilotage situation, while invalidating language designed to achieve the same purpose in a towage situation, it is advisable to require the execution of an agreement containing the clauses found in Appendix A-12-a. This will assist in preventing the Navy from being held liable for negligent pilotage and/or tug services in the situation where a commercial company would be relieved of liability.

1216 DAMAGES

a. Establishing Navy affirmative damage claims often presents extreme difficulty, requiring an exacting and high standard of proof. Particularly difficult are detention claims with respect to naval vessels.

b. Among the items of claim which may result from a collision are the following:

(1) Temporary and permanent collision repairs.

(2) Drydocking.

(3) Lost and damaged equipment, stores, provisions, fuel, and ammunition.

(4) Handling fuel and ammunition.

(5) Towage and pilotage after collision.

(6) Personnel claims.

(7) Survey fees.

(8) Detention

c. The degree of proof of Navy damages is illustrated in the Commissioners' Reports in the *CHICAGO-SILVERPALM, EVANSVILLE-MARBLEHEAD* cases, *U.S. v. M/S SILVERPALM,* 1937 A.M.C. 498 (N.D. CAL. 1937); *U.S. v. SS EVANSVILLE,* 1941 A.M.C. 62 (E.D.N.Y. 1940). To meet the required burden of proof, it is necessary that the original documentary data which establish the repair costs be obtained immediately. The Naval Sea Systems Command has called to the attention of its field activities the necessity for maintaining separate and exact records of collision repair costs of naval vessels and for expediting the furnishing of such data to judge advocates who are concerned with the preparation of damage statements. Collision repair specifications should be consonant with the surveyor's findings and recommendations.

d. In each situation, the original specifications, job orders, time and material cards, drydocking report, and departure report will be required. It is also essential that the log of the naval vessel contain entries to establish specifically the times when collision repairs commenced, during which they were carried out, and when they were completed. Coordination with the repair activity is, of course, necessary in this regard, in order that there will be no time discrepancies in the various records. The local judge advocate or admiralty officer, on being advised of the start of collision repair work, should keep in touch with the repair yard to assure adherence to the prescribed procedure, and preparation of the required records. Where a departure report is prepared, it must be checked to confirm that the data are consistent with the repair period, and to make certain that there has been proper allocation of costs between collision and noncollision items, as reflected by the job orders.

e. All noncollision work must be covered by separate job orders. This procedure will eliminate the issue of the possible inclusion of noncollision work in the collision repair costs. If during the repairs additional damage is discovered which was not covered by the original survey, opposing interests should be notified and given a chance to survey the newly discovered damage.

f. Questions as to the rate of overhead, what items are properly included therein, drydocking charges, and naval shipyard repair costs as compared with commercial costs, are issues of law and matters for negotiations in settlement. These problems therefore are not discussed here in detail.

g. An almost unvarying issue is the Navy detention claim. When a commercial vessel must immediately be withdrawn from service by reason of collision, her owner recovers her loss of earnings in addition to expenses reasonably incurred during the repair period. The same rule as to loss of earnings does not apply to naval vessels, since they are not engaged in carrying passengers or cargo for profit. However, when the loss of use of a naval vessel is the proximate result of a collision, the Government is entitled to recover the operating and maintenance cost of the ship for the period during which the Navy has been deprived of her normal service. These costs include the out-of-pocket expenses incurred during the repair period, particularly the following:

(1) Pay and allowances of officers and crew.

(2) Subsistence of crew.

(3) Fuel and lube oil consumed.

(4) Supplies and stores consumed.

h. To support a detention claim, it is necessary to include in the Navy's damage settlement documentary evidence showing the exact subsistence, wages, and other expenses of the naval vessel. With respect to pay and subsistence, this is best handled in the form of affidavits from the cognizant supply and disbursing officers to the effect that the original records disclose expenditures for pay and subsistence as set forth in the affidavits. The Judge Advocate General (Admiralty Division) or the local judge advocate will advise in appropriate cases whether such affidavits are required. The length of the repair period, if not established by the vessel's log, will require independent evidence. With the basic facts as to subsistence, wages, and the repair period thus established, the extent of recovery for detention becomes a question of law. The ship's log should contain entries showing when the vessel entered and departed the repair yard and when collision repairs were started and completed.

i. It is most desirable that collision repairs to a naval vessel be made as expeditiously as practicable, where a detention claim exists against another vessel, in an effort to eliminate the issue of whether repairs by a naval activity required an unreasonable time. A short repair period may also avoid the skeleton crew doctrine, which has been asserted against the Navy in some of the older litigated cases. Under this doctrine where an extended repair period was involved, the Navy was allowed to recover only the pay, allowances and subsistence for a skeleton crew, rather than the full complement of officers and men.

j. Where a vessel would have been out of service in any event, for example, by reason of annual overhaul or prospective inactivation, detention is not legally recoverable. To avoid the labor of preparation of detention data in cases where detention is not recoverable, the local judge advocate and the Judge Advocate General (Admiralty Division) should be advised as soon as possible of plans for repair of the naval vessel. Appropriate instructions will then be issued as to the extent of the data required in support of the Navy's claim.

k. Naval vessels (particularly MSC vessels) are frequently repaired in commercial yards rather than naval shipyards. In such cases, the collision repair specifications should be written up on the basis of the surveyors' findings and recommendations. Invitations to bid are then normally issued to commercial shipyards, and the contract is awarded on the basis of the low bid. This procedure simplifies proof of the collision repair costs, which can be established by the shipyard's bill or invoice. As in the case of repairs by a naval shipyard, it is most important that any noncollision work be covered by separate specifications, job orders, bids and invoices.

l. Extreme difficulties arise in the preparation of damage statements if these matters are deferred until the issue becomes relevant in future negotiations or litigation. For that reason, damage statements are prepared immediately after the necessary cost data are available upon the completion of collision repairs. As in the case of the original documentary data with respect to navigation, the original documents to support the damage claim must be carefully preserved.

1217 SUMMARY

a. In Collision Cases:

(1) Report the collision by message to JAG and concerned commands as required.

(2) Preserve the original logs, navigational, radar, and other ship's records bearing on the collision.

(3) Do not erase any log or other entry. If correction is needed, line through original entry, write-in and initial the substituted entry.

(4) Compare and note any discrepancies between the bridge and engineroom clocks. Log the faults of the other vessel.

(5) If no investigation is ordered, take detailed statements of witnesses, including name, rate, social security number, license or certificate (Z) number, marine experience, and permanent home address.

(6) Instruct all hands not to discuss the circumstances of the collision with anyone except appropriate Navy representatives.

(7) Arrange through the local judge advocate for surveys of the damage of your ship and the other ship.

(8) Obtain photographs of the damage, showing the angle of collision and other details.

(9) Where the other vessel was wholly or partially at fault, take steps to support the Navy's damage claim.

b. In Personal Injury Cases:

(1) Report as required.

(2) Record circumstances in log and preserve entries.

(3) Afford injured person opportunity for physical examination (including X-rays) and emergency medical treatment. If availed of, log and report results; if refused, note accordingly.

(4) Take detailed statements of witnesses with identification as suggested above.

(5) If gear or equipment gave way, preserve same if practical.

(6) Take photographs of the place or apparatus involved.

Chapter XIII

DELIVERY OF PERSONNEL-SERVICE OF PROCESS AND SUBPOENAS-PRODUCTION OF OFFICIAL RECORDS

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PART A–DELIVERY OF PERSONNEL

1301 DELIVERY WHEN PERSONNEL WITHIN TERRITORIAL LIMITS OF THE REQUESTING STATE

In cases in which the delivery of any person in the Navy or Marine Corps is requested by local civil authorities of a State, Territory, or Commonwealth for an alleged offense punishable under the laws of that jurisdiction, and such person is attached to a Navy or Marine Corps activity within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is presented, subject to exceptions in section 1308. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected if reasonably practicable.

1302 DELIVERY WHEN PERSONNEL BEYOND TERRITORIAL LIMITS OF REQUESTING STATE

a. *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, upon compliance with the provisions of this section and §§1305, 1306, and 1309 and subject to the exceptions in section 1308, to deliver such person for the purpose of making him amenable to prosecution. The serviceman may be delivered upon formal or informal waiver of extradition in accordance with subsection b, or upon presentation of a fugitive warrant, in which case the procedures of subsection c apply.

b. *Waiver of extradition*

(1) Any person may waive formal extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. The form for waiver should be substantially as that suggested in Appendix A-13-a.,

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in subsection c below.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

(4) When an individual declines to waive extradition, the nearest naval legal service office or Marine Corps staff judge advocate shall be informed and shall make further representations to the civil authorities as appropriate. The individual concerned shall not be transferred or ordered out of the State in which he is then located, without the permission of the Secretary of the Navy (Judge Advocate General), until the matter of extradition is resolved.

c. *Fugitive warrants*

(1) A fugitive warrant, as used in this chapter, is a warrant for the arrest of an individual issued by a State court of competent jurisdiction. Normally, a State requesting delivery of a serviceman from another State will issue a fugitive warrant to the State where the serviceman is then located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the serviceman is located, the latter State will normally request delivery of the serviceman to local State authorities. Delivery to local State officials should be arranged by Navy or Marine Corps officers designated in subsection a of this section and subject to the conditions of section 1308 and paragraphs (3) and (4) of this subsection.

(3) Upon receipt of such a request for delivery of a serviceman under fugitive warrant to such State authorities, if such serviceman voluntarily waives extradition, the provisions of subsection b, above, apply. If waiver is refused, the serviceman, after delivery to local State authorities, will then have the opportunity to contest extradition in the courts of the State in which he is located. Where waiver is refused, the nearest naval legal service office or Marine Corps staff judge advocate is responsible for effecting liaison with officials of both the requesting State and State in which the serviceman is located. The provisions of paragraph (4) of subsection b above regarding transfer of the serviceman apply while State authorities are actively proceeding to effect extradition.

(4) No delivery of a serviceman by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by section 1305 and execution of such agreement by officials of both the requesting State and the State in which the serviceman is located or execution of such agreement by officials of the State in which the man is located where such officials accept on behalf of such State the full responsibility for returning the individual to the designated military command.

d. *Personnel stationed outside of the United States.* When the serviceman sought by State authorities is not located within a State, Territory, or Commonwealth of the United States, see section 1303.

1303 PERSONNEL STATIONED OUTSIDE THE UNITED STATES

a. *Personnel desired by local authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will direct the Commandant of the Marine Corps or Chief of Naval Personnel, as the case may be, to issue appropriate orders to the individual concerned directing his transfer to the United States to the military installation most convenient to the Department of the Navy. The individual will be held under the minimum restraint required under the circumstances. The Commandant of the Marine Corps or the Chief of Naval Personnel, as the case may be, will inform the officials of the requesting State of the location of the individual concerned and that custody may be obtained by compliance with section 1301, or 1302, as applicable.

b. *Personnel desired by Federal authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial in Federal District Court, upon appropriate representations by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the individual will be returned to the United States and held at a military facility convenient to the Department of the Navy. Delivery may be accomplished as set forth in section 1306.

1304 JAG AUTHORITY

The Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under sections 1301, 1302, 1303, 1305, 1314, 1315, 1320, 1323, and 1330.

1305 AGREEMENT REQUIRED PRIOR TO DELIVERY TO STATE AUTHORITIES

a. *Delivery under Article 14, UCMJ.* In every case in which the delivery of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in Appendix A-13-b. When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which he is attached) which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation (under escort in case of delivery in accordance with section 1315) back to a naval or Marine Corps activity as set forth herein, cash necessary to cover his incidential expenses en route thereto, and the Department of the Navy so informed. Any departure from the agreement set forth in Appendix A-13-b must have prior approval from the Secretary of the Navy (Judge Advocate General).

b. *Delivery under Interstate Agreement on Detainers Act.* Special forms, not contained in this Manual, are used when delivering prisoners under the Interstate Agreement on Detainers Act. The Act is infrequently used and most requests are pursuant to Article 14, UCMJ. See section 1315 for a detailed discussion of the Act.

1306 DELIVERY OF PERSONNEL TO FEDERAL AUTHORITIES

a. *Authority to deliver.* Commanding officers are authorized to and should deliver personnel to Federal law enforcement authorities who display proper credentials and represent to the command that a federal warrant for the arrest of the individual concerned has been issued, subject to exceptions in section 1308. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected if reasonably practicable.

b. *Agreement not required of Federal authorities.* The agreement described in section 1305 will not be exacted as a condition to the delivery of personnel to Federal law enforcement authorities. In the event that the person delivered is acquitted, or, if convicted, immediately upon satisfying any sentence of the court, or upon other disposition of his case, the person will be returned to the naval service (provided that naval authorities desire his return) and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

1307 DELIVERY OF PERSONNEL TO FOREIGN AUTHORITIES

Except when provided by agreement between the United States and the foreign government concerned, commanding officers are not authorized to deliver persons in the Department of the Navy to foreign authorities. When a request for delivery of personnel is received in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General.

1308 CIRCUMSTANCES IN WHICH DELIVERY IS REFUSED

a. *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending, commanding officers should obtain legal guidance from a judge advocate of the Navy or Marine Corps prior to delivery of personnel to Federal, State, Territory, Commonwealth, or local authorities if reasonably practicable.

b. *When delivery may be refused.* Delivery may be refused only in the following limited circumstances:

(1) Where the accused has been retained for prosecution as set forth in section 0107g(3)(a).

(2) When the commanding officer considers that extraordinary circumstances exist which indicate that delivery should be denied.

c. *Delivery under Detainers Act.* Where the accused is undergoing a sentence of a court-martial, see section 1315.

d. *Reports required.* When refusal of delivery is intended see section 1310.

1309 RESERVED

1310 REPORT REQUIRED WHEN DELIVERY REFUSED

In any case where it is intended that delivery will be refused, the commanding officer shall report the circumstances to the Judge Advocate General by message (or by telephone if circumstances warrant). The initial report shall be confirmed by letter setting forth a full statement of the facts. RCS JAG 5821-4 (Appendix A-13-c). A copy of the report shall be forwarded to the area coordinator.

*1311 RESERVED

1312 PERSONNEL RELEASED BY CIVIL AUTHORITIES ON BAIL OR ON THEIR OWN RECOGNIZANCE

A person in the Navy or Marine Corps arrested by Federal, State or Territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or Territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or leave to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

1313 INTERVIEWING OF NAVAL PERSONNEL BY FEDERAL CIVILIAN INVESTIGATIVE AGENCIES

Requests by the Federal Bureau of Investigation or other Federal civilian investigative agencies to interrogate persons in the naval service suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to the Judge Advocate General.

1314 HABEAS CORPUS

a. *General.* In all cases where habeas corpus process is served on a person in the Navy or Marine Corps, the nearest U.S. Attorney will be informed immediately and his assistance requested. A report of such service will be made to the Secretary of the Navy (Judge Advocate General) by message (telephone if circumstances warrant) confirming the initial report by a speed letter to the Secretary of the Navy (Judge Advocate General). This letter should include the information outlined in subsection b. below. Action must be taken expeditiously in habeas corpus proceedings as the courts generally allow only a short period of time in which to prepare a response.

b. *Reports required*

(1) Immediately following the message or telephonic report to the Secretary of the Navy (Judge Advocate General) a copy of the petition for the writ of habeas corpus, and all other pleadings, orders, and process in the case, will be forwarded to the Secretary of the Navy (Judge Advocate General) by letter. The letter should also include a full statement as to the circumstances under which the petitioner has been detained. RCS JAG 5821-6.

(2) When the hearing has been completed and the court has issued its order in the case, a copy of the order shall be forwarded promptly to the Secretary of the Navy (Judge Advocate General). This is particularly important if the order was adverse to the Navy in order to permit a timely determination as to whether or not to undertake further proceedings.

1315 REQUEST FOR DELIVERY OF PERSONNEL SERVING SENTENCE OF COURT-MARTIAL

a. *General.* Authority to honor requests for delivery of military personnel serving a sentence of court-martial is provided by Article 14, UCMJ (10 U.S.C. § 814). Although seldom utilized, additional authority and mandatory obligation to deliver such personnel is provided by the Interstate Agreement on Detainers Act, Pub. L. No. 91-538 §§ 1-8, Dec. 9, 1970, 84 Stat. 1397-1403, (18 U.S.C. Appendix, hereinafter "the Act") which applies to the federal agency that is holding the prisoner and has been adopted by approximately four-fifths of the state jurisdictions. The Department of the Navy as an agency of the federal government shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for the prisoners to be tried on charges pending before state courts, either at the prisoner's request, or at the request of the state where the charges are pending. When delivery is refused, comply with section 1310.

b. *Interstate Agreement on Detainers Act.* Upon request under the Act by either the prisoner himself or state authorities, the cognizant Navy or Marine Corps staff judge advocate, as appropriate, shall effect liaison with the appropriate state officials and shall monitor and ensure that action is taken by the cognizant commander on all such requests. While requests between federal authorities do not appear to be specifically covered by the Act, prisoner requests for disposition of federal charges shall generally be handled in accordance with the procedures outlined herein except that no delivery agreement is required by federal authorities (see section 1306). In the case of requests by state authorities under the Act, liaison shall be established with the Director, Bureau of Prisons, Washington, D.C. 20537, who has sole authority to deny the request. The Act provides that the court-martial sentence shall continue to run during temporary custody.

(1) *State Request.* State officials may demand delivery of prisoners in military custody under § 2, Article IV, of the Act if (1) a detainer has been lodged against the prisoner; and (2) the prisoner is serving a sentence (regardless of whether an appeal is in process). Delivery of such prisoner upon state

request is mandatory as to Navy/Marine Corps authorities and may be refused only if the request is disapproved by the Director of the Bureau of Prisons, Washington, D.C. as the designee of the Attorney General for this purpose. 28 C.F.R. § 0.96(a). There has been no further delegation to military authority. The consent of the prisoner is not required and the Director of the Bureau of Prisons is the only authority who can provide relief to the prisoner.

(2) *Prisoner Request.* The obligation to grant temporary custody under the Act applies with equal force to requests to be delivered to state authority made by the prisoner. § 2, Article III (c), of the Act requires the prisoner's custodial official to inform him of the existence of any detainer and of his right to request disposition. The prisoner's request is directed to the custodial official who is required to forward it to the appropriate prosecuting official and court together with a certificate of prisoner status, all as provided by Article III of the Act.

(3) *Delivery.*

(a) *Requests under Detainers Act.* When a request for delivery is received from civil authorities pursuant to § 2, Article IV of the Act, the prisoner should be informed that he may request the Director of the Bureau of Prisons, Washington, D.C. 20537, to deny the request, within 30 days after such request is received. Upon the expiration of such 30-day period or upon denial of the prisoner's request by the Director of the Bureau of Prisons, whichever occurs first, the prisoner shall be delivered to the requesting authority as soon as practicable.

c. *Article 14, UCMJ.* When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody shall be governed by Article 14, UCMJ and sections 1301 *et seq. JAG Manual.* The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, *e.g.*, situations where additional courts-martial are to be convened or the delivery would severely prejudice the prisoner's appellate rights. The agreement discussed in section 1305 will be required as a condition precedent to delivery. Unlike delivery under the Act, delivery of custody persuant to Article 14 operates to interrupt the execution of the court-martial sentence.

d. *Forms.* The form in Appendix A-13-c with appropriate modifications should be utilized in reporting refusal of delivery of prisoners.

1316 REQUEST FOR DELIVERY OF PERSONNEL SERVING SENTENCE OF A STATE COURT

a. *General.* Ordinarily, personnel serving protracted sentences resulting from a State criminal conviction will be processed for administrative discharge by reason of misconduct. (*See* article 3420185(1)(e) BUPERSMAN and paragraph 6017.3c, MARCORSEPMAN.) On occasion, however, it may be in the best interest of the naval service to retain a servicemember, charged with a serious offense subject to military jurisdiction, in order to try the member by court-martial. The vehicle available for obtaining temporary custody of incarcerated personnel for the purpose of prosecution is a request to the State under the Interstate Agreement on Detainers Act. [18 U.S.C. Appendix (1976)].

b. *Interstate Agreement on Detainers Act.* Military authorities may avail themselves of the Act to obtain temporary custody of a servicemember incarcerated in a State institution, pursuant to conviction by a State court, in order to resolve criminal charges against the member that are cognizable before a court-martial.

(1) *Detainer.* If a command chooses to follow this course of action, the commanding officer of the cognizant Naval Legal Service Office, shall file a detainer with the warden, commissioner of corrections, or other State official having custody of the member. The detainer shall identify the member with particularity, enumerate the military charges pending against him/her, and request the Command be notified in advance of any intention to release the member from confinement.

(2) *Request for Delivery.* As soon as practicable after filing the detainer, the commanding officer of the cognizant Naval Legal Service Legal Office shall prepare a written request for temporary custody of the incarcerated servicemember addressed to the State official charged with administration of the State penal system. The request shall designate the person(s) to whom the member is to be delivered and shall be transmitted via the military judge to whom the service member's case has been assigned. If the request is properly prepared, the military judge shall approve, record, and transmit the request to the addressee official. The Act provides for a 30-day period after receipt of the request before the request is honored. Within that period of time the Governor of the State may disapprove the request, either on his own motion or upon the prisoner's request. If the Governor should disapprove the

(d) Pay all costs of transporting, caring for, keeping, and returning the prisoner to the State, unless the command and the State should otherwise agree on some other allocation of the costs or responsibilities.

1317-1319 RESERVED

PART B–SERVICE OF PROCESS AND SUBPOENAS UPON PERSONNEL OF THE NAVAL ESTABLISHMENT

1320 SERVICE OF PROCESS UPON PERSONNEL

a. *Within the jurisdiction.* Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, Territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, such service should not be allowed within the confines of the command until the permission of the commanding officer has first been obtained. Personnel serving aboard vessels located within the territorial waters of the State or Territory out of which the process issues are considered within the jurisdiction of that State or Territory for the purpose of service of process. The commanding officer shall permit the service of process except in unusual cases where he concludes that compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, the commanding officer shall require that the process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases commanding officers will ensure that the nature of the process is explained to the person concerned.

b. *Personnel beyond the jurisdiction of the court*

(1) Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in subparagraph a. above for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. In most cases he should further advise the person concerned to consult legal counsel.

(2) Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. In such cases the commanding officer will ensure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that the person named therein refused to accept it.

c. *Service of process arising from official duties*

(1) If the service of process involves a potential claim against the Government, *see* sections 2021a-b and 2032. While the right to remove to Federal Court under 28 U.S.C. 1442 and 1442a requires color of office, which is considered to be more than simple scope of employment, this right must be fully explored in all situations where the outcome of the State court action may influence a claim or potential claim against the United States.

(2) Any military member or civilian employee who is served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of official duties shall immediately deliver all such process and pleadings to the commanding officer. The commanding officer shall ascertain the pertinent facts, notify the Judge Advocate General (Code 14), preferably by telephone, of the service, and immediately forward to that Office the pleadings and process in the case. The military member or civilian employee will be advised concerning his/her right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. §1442 and §1442a, his/her rights under the Federal Driver's Act (28 U.S.C. §2679B), (if applicable), and the right of a Federal employee to be represented by Department of Justice attorneys in State criminal proceedings and in civil and Congressional proceedings in which that

employee is sued or subpoened in an individual capacity, as delineated in 28 CFR §50.15 (1979). Any letter requesting representation shall be addressed to the Secretary of the Navy (Judge Advocate General), and shall be endorsed by the commanding officer, who shall provide all necessary data bearing upon the question as to whether the employee was acting within the scope of employment at the time of the incident out of which the suit arose.

(3) Whenever a military member or civilian employee of the Department of the Navy is served with any process because of his official position, the Judge Advocate General shall be notified by message or telephone. This notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action. RCS JAG 5821-7. For lawsuits filed in the United States District Court, Washington, D.C., the Air Force has been assigned responsibility for accepting service of process for the Navy. See section 1314 for habeas corpus and section 1340 for litigation reports. In habeas corpus cases, liaison with the U.S. Attorney assigned to protect the Navy's interests will be maintained through the Judge Advocate General after the initial notification prescribed by section 1314.

d. *Service of process of foreign courts*

(1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846.) Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General. Service of process when the United States Government or one of its agencies or instrumentalities is the named defendant may involve a situation where the doctrine of sovereign immunity will allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the United States, on the other hand, must always be processed in accordance with the applicable international agreement or treaty, whether or not the suit involves acts performed in the course of official duties. When the report required by section 1325 is made, the Judge Advocate General will make arrangements through the Department of Justice for defense of a suit against the United States or an official acting within the scope of his official duties, or other appropriate arrangements, and will issue appropriate instructions.

(2) Usually, persons in the Department of the Navy are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with subsection c above. In exceptional cases where the United States has agreed that service of process will be accepted by persons in the Department of the Navy located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of subsection a, above, will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands him or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a member of his command, a commanding officer shall notify the serviceman of the fact that a particular foreign court is attempting to serve process upon him and inform him that he may ignore the process or come to the office and receive it. If the serviceman chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that he chose to ignore it, and that no physical offer of service had been made. The commanding officer will keep the Judge Advocate General advised of all requests for service of process from a foreign court and the details thereof.

e. *Leave or liberty to be granted persons served with process.* In those cases where personnel either are served with process, or voluntarily accept service of process, the commanding officer normally will grant leave or liberty to the person served in order to permit him/her to comply with the process; provided such absence will not prejudice the best interests of the naval service. In cases where a member is being called as a witness for a nongovernmental party only because of performance of official duties, the commanding officer is authorized to issue the member permissive orders authorizing attendance at the trial at no expense to the Government. Members are permitted to accept fees and mileage tendered.

f. *Report where service is not allowed.* Where service of process is not permitted, a report of such refusal and the reasons therefor shall be forwarded by speed letter (telephone if conditions warrant) to the Secretary of the Navy (Judge Advocate General). RCS JAG 5821-8.

1321 PERSONNEL SUBPOENAED AS WITNESSES IN STATE OR LOCAL COURTS

Where military personnel or civilian employees are subpoenaed to appear as witnesses in State or local courts, and are served in the manner described under conditions set forth in section 1320, the provisions of section 1320e apply. If naval personnel are requested to appear as witnesses in State or local courts where the interests of the Federal Government are involved (*e.g.*, Medical Care Recovery Act cases) the procedures described in section 1322a may be followed.

1322 PERSONNEL SUBPOENAED AS WITNESSES IN FEDERAL COURTS

a. *Witnesses on behalf of Federal Government.* Where naval personnel or civilian employees of the Department of the Navy are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in a case involving activities of the Department of the Navy, the Chief of Naval Personnel, the Commandant of the Marine Corps, or the Judge Advocate General with respect to civilian employees, as the case may be, will direct the activity to which the person is attached to issue temporary additional duty travel orders to the person concerned. The charges for such orders shall be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Travel Regulations and U.S. Navy Travel Instructions. If the required witness is to appear in a case where the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046278.

b. *Witnesses on behalf of nongovernmental parties*

(1) *Criminal actions.* Where naval personnel are served with a subpoena to appear as a witness for the defendant in a criminal action and the fees and mileage required by Rule 17(d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer is authorized to issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the public interest would be seriously prejudiced by his absence. In this case a full report of the circumstances will be made to the Judge Advocate General. In those cases where fees and mileage are not tendered as required by Rule 17(d) of the Federal Rules of Criminal Procedure, but the person subponaed still desires to attend, the commanding officer is authorized to issue permissive orders at no cost to the Government. However, such persons should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) *Civil actions.* Where naval personnel are served with a subpoena to appear as a witness on the behalf of a non-governmental party in a civil action brought in a Federal court, the provisions of section 1320 apply.

1323 NAVAL PRISONERS AS WITNESSES OR PARTIES IN CIVIL COURTS

a. *Criminal actions.* In those instances where the Federal, State, or Territorial authorities desire the attendance of a naval prisoner as a witness in a criminal case, a request for such person's attendance should be submitted to the Secretary of the Navy (Judge Advocate General). Upon receipt of such a request, authority will be given, in a proper case, for the production of the requested naval prisoner in court without resort being had to a writ of *habeas corpus ad testificandum* (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

b. *Civil actions.* The Department of the Navy will not authorize the attendance of a naval prisoner in a

Federal, State, or Territorial court, either as a party or as a witness, in private litigation pending before such court, because in these the court may grant a postponement or a continuance of the trail. The deposition of a naval prisoner may be taken in such a case subject to such reasonable conditions or limitations as may be imposed by the command concerned.

1324 INTERVIEWING PERSONNEL PRELIMINARY TO CIVIL LITIGATION IN MATTERS PERTAINING TO OFFICIAL DUTIES

a. *Request by parties in interest.* Except as hereinafter limited, requests, preliminary to civil litigation, for permission to conduct an *ex parte* interview of persons in the Department of the Navy (enlisted, commissioned, or civilian) in matters growing out of their official duties, and requests regarding the obtaining of their statements shall be forwarded to the officer in charge of the cognizant naval legal service office or Marine Corps staff judge advocate, who, when practicable, will make appropriate arrangements. Interviews of such personnel shall be conducted in the presence of an officer designated by the officer in charge, naval legal service office or Marine Corps staff judge advocate. If any of the parties in interest desire statements from the interviewed personnel, such statements shall be prepared under the direction of the designated officer. A signed copy of the statement shall be furnished (at no cost to the government) to the person making the statement, and to the officer in charge, naval legal service office or Marine Corps staff judge advocate and to the Judge Advocate General. If the interview involves any line of inquiry which would disclose privileged matters or compromise classified material or otherwise be detrimental to the security interests of the United States, the assigned officer shall immediately preclude that line of inquiry.

b. *Limitations.* Requests mentioned in subsection a. above shall not be granted where the United States is a party in any related litigation or where its interests are involved, including cases where the interests of the United States or any Department thereof are represented by private counsel by reason of insurance or subrogation arrangements. In these instances, records, data, and witnesses shall be made available only to the Department of Justice or to such other U.S. Government departments, agencies or personnel requiring access thereto in the performance of their official duties.

c. *Admiralty matters.* Inquiries which relate to admiralty matters or to maritime litigation, whether involving naval vessels or not, shall be sent to the Office of the Judge Advocate General (Deputy Assistant Judge Advocate General (Admiralty)). Examples of admiralty matters are set forth in chapter 12.

1325 SUITS AGAINST THE UNITED STATES

a. *General.* The primary responsibility for representing the United States in any litigation in which the United States has an interest rests in the Attorney General. For the purpose of affording the Attorney General timely notice of legal actions arising out of operations of the Naval Establishment, the Judge Advocate General and the General Counsel, within the areas of their respective jurisdictions, maintain close liaison with the Department of Justice. Reports are required of all suits against the United States, or its prime contractors or subcontractors on contracts under which the Government may be obligated to make reimbursement or in cases where the United States is, in legal effect, the defendant.

b. *Reports to the Judge Advocate General.* When any command is apprised, by service of process or otherwise, of the commencement of any civil litigation or legal proceedings, including those involving nonappropriated-fund activities, other than suits within the jurisdiction of the General Counsel as set forth in subsection c below, which arise out of the operations of the Naval Establishment or are otherwise of substantial interest to it, such command will report to the Judge Advocate General, Navy Department, Washington, D. C., by the most expeditious means, using message, telephone, or letter, as may be warranted by the circumstances. RCS JAG 5821-9. This category of civil litigation and other legal proceedings includes, but is not limited to, any legal proceeding involving the United States as a party and arising out of operations of the Department of the Navy; proceedings against any person subject to military law or any official or employee of the Department of the Navy in connection with his public duties; and proceedings in which attachment of Government funds or other property is sought. The report shall contain as much of the following information as may be pertinent:

(1) Name of parties to the proceeding.

(2) Nature of the action.

(3) Correct designation of the tribunal in which the proceeding is brought.

(4) Docket number of case, if available.

(5) Names of person or persons on whom service was made, method of service, and dates.

(6) Explanation of Government's interest in the proceeding.

(7) Date by which the defendant must plead or otherwise respond.

(8) Nature of the principal defense, if known.

(9) Status of the defendant as being a Government officer, employee, agent, contractor, nonappropriated-fund activity employee, etc.

(10) Amount claimed, or other relief sought.

(11) If a contractor is involved, the contract number, and information as to whether the contractor desires or is willing to permit the suit to be defended by a United States Attorney.

(12) Data as to whether the subject matter of the suit is covered by insurance; if so, whether covered to the amount claimed, and whether the insurance carrier will accept full responsibility for defense of the suit.

(13) If action is brought in a foreign country, a recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interests of the United States. Normally, the names of such attorneys should be from a list maintained by the U.S. Embassy or Consulate.

(14) Such other available information as may be necessary for a full understanding of the action and to enable the Government to prepare a defense.

c. *Reports to the General Counsel.* RCS JAG 5821-10. A report as required above shall be made to the General Counsel, Navy Department, Washington, D.C., rather than to the Judge Advocate General, in all cases relating to:

(1) Business and Commercial law
(2) Patent legal matters
(3) Civilian personnel law
(4) Contract claims and litigation

(For a more detailed explanation of areas of responsibility, see SECNAVINST 5430.25 series.)

d. *Cases Involving Civilian Personnel Matters.* The Central Office of the General Counsel includes the Office of Civilian Personnel Law. Commands, activities, and officers in charge of naval legal service offices will cooperate with attorneys of the Office of the General Counsel and render such assistance as is requested in all matters pertaining to civilian personnel litigation.

e. *Initial and Supplemental Reports.* If all pertinent information is not readily available, a prompt report should be made with such information as is available, supplemented by an additional report as soon as possible.

PART C–PRODUCTION OF OFFICIAL RECORDS

1330 PRODUCTION OF OFFICIAL RECORDS IN RESPONSE TO COURT ORDER

a. *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, D.C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. See the provisions in SECNAVINST 5211.5 series which set forth the additional requirement that reasonable efforts be made to notify all individuals to whom the record pertains of (1) the disclosure, and (2) the nature of the information provided, when the court order has become a matter of public record and the record is contained in a "system of records" as defined in SECNAVINST 5211.5 series. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without a court order when such records are not in a "system of records" as defined by the Privacy Act [5 U.S.C. §552a. (1976)] except as noted in subsections b and c below. In determining whether or not a record not contained in a "system of records" will be furnished in response to a written request for that record, consideration shall be given to the provisions of SECNAVINST 5720.42 series. If the record is in a "system of records", it may be produced upon written request of one or more parties in interest or their respective attorneys in the absence of a court order only if the individuals to whom the record pertains give written consent to the production or if the production is otherwise authorized under the Privacy Act and SECNAVINST 5211.5 series. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified. Any release of classified information for civil court proceedings (whether civil or criminal in nature) must also be coordinated within the office of the Chief of Naval Operations (OP-009D) in accordance with OPNAVINST 5510.1 series.

b. *Records in the custody of National Personnel Records Center.* Court orders, or documents in the nature of *subpoenas duces tecum* if they have the legal effect of court orders, demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard, St. Louis, Missouri 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General):

(1) When the United States (Department of the Navy) is one of the litigants;

(2) When the case involves a person or persons who are or have been senior officers or officials within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

c. *Exceptions.* Where not in conflict with the foregoing restrictions relative to personal information, the release of which would result in a clearly unwarranted invasion of personal privacy, the production in Federal, State, Territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility in the area. Where travel is involved, it must be without expense to the Government.

d. *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 F.R. 5963, as implemented by Federal Personnel Manual, chapter 294, and chapter 339.1-4. Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or For-Official-Use-Only information, such as loyalty or security records. The disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor shall be governed by SECNAVINST 5211.5 series and SECNAVINST 5720.42 series, as appropriate. Where information is furnished hereunder in response to a

court order, it is advisable that certified copies rather than originals be furnished and that, where original records are to be produced, the assistance of the United States Attorney or United States Marshal be requested so that custody of the records may be maintained.

e. *Accounting for disclosures from "systems of records."* When compliance with a court order for production of records is deemed appropriate or when the release of records is otherwise authorized in subsection a, above, and the records released are contained in a "system of records," the official responsible for releasing the records shall consult SECNAVINST 5211.5 series regarding the requirement that accountings of the disclosures be maintained. Appendix A-3-a is recommended for this purpose.

1331 PRODUCTION OF OFFICIAL RECORDS IN THE ABSENCE OF COURT ORDER

a. *General.* Release of official records outside the Department of the Navy in the absence of court order is governed by the Privacy Act (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. § 552). The following sources pertain: SECNAVINST 5211.5 series (Privacy) and SECNAVINST 5720.42 series (Freedom of Information).

b. *Release of JAG Manual Investigations, Court-Martial Records, Articles 69 and 73 Petitions, and Article 138 Complaints of Wrongs.* Except as provided in this section, only the Assistant Judge Advocates General (Civil Law) and (Military Law) shall make determinations concerning the release of records herein covered if less than a release of the complete requested record will result. In all other instances the Deputy Assistant Judge Advocates General, who have cognizance of the record(s) in issue, may release such records. Local record holders are reminded that the authority to release records does not necessarily include denial authority.

(1) *JAG Manual Investigations (including enclosures).* Any request for release outside of the Department of the Navy shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination.

(2) *Court martial records and Articles 69 and 73 petitions.* These are matters of public record and may be released by any local holder. Court martial records should be released only following proper authentication.

(3) *Article 138 Complaints of Wrongs.* Forward as in b.1 above.

c. *Affirmative Claims Files.* Affirmative claims files (including Medical Care Recovery Act files), except to the extent that such files contain copies of reports of investigations prepared under this Manual, or classified or privileged information, may be released by local holders to insurance companies to support claims; to civilian attorneys representing the injured party's and the government's interests; and to other components of the Department of Defense, without the prior approval of the Judge Advocate General, provided that the amount of the claim is within the monetary settlement authority of the releaser. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility for the area.

d. *Accounting for disclosures of records from system of records.* When records located in a "system of records" are released, the official responsible for releasing the records shall consult SECNAVINST 5211.5 series regarding the requirement that accountings of the disclosures be maintained. Appendix A-3-a is recommended for this purpose.

1332 CERTIFICATES OF FULL FAITH AND CREDIT

The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General is authorized to execute certificates of full faith and credit certifying the signatures and authority of officers of the Department of the Navy.

PART D–LIAISION WITH THE DEPARTMENT OF JUSTICE

1340 LITIGATION REPORTS

In all lawsuits involving the Department of the Navy, other than those under the cognizance of the General Counsel, the litigation report to the Department of Justice will be prepared in the Office of the Judge Advocate General unless authority to prepare the report is specifically delegated to a field activity. RCS JAG 5821-11

1341 LIAISON WITH U. S. ATTORNEY

In matters other than those which are under the cognizance of the General Counsel, liaison with local U.S. Attorneys will be maintained through the Judge Advocate General, except for the initial report required by section 1314 in habeas corpus cases, unless specific authority has been delegated to a field activity.

PART E–MINOR OFFENSES COMMITTED ON NAVY AND MARINE CORPS INSTALLATIONS

1350 GENERAL

The Federal Magistrates Act, 18 U.S.C. §§ 3401-3402, provides, *inter alia*, for trial by Federal Magistrates of individuals who commit minor offenses within Federal reservations. Policies and procedures for implementation of the Federal Magistrates Act and the handling of minor offenses committed aboard Navy and Marine Corps installations are set forth in SECNAVINST 5822.1 series.

1351 PROSECUTION BEFORE FEDERAL MAGISTRATES

a. *Responsibility of the Department of Justice.* The Department of Justice is primarily responsible for the prosecution of offenses before Federal Magistrates. Prosecution before Federal Magistrates of minor offenses committed on Navy and Marine Corps installations which are situated within the judicial district of a United States District Court, however, may be conducted by qualified Navy and Marine Corps officers when no representative of the Department of Justice is available provided the approval of the appropriate United States Attorney is obtained.

b. *Designation of Navy and Marine Corps officers to conduct prosecutions.* If the United States Attorney advises that no representative of the Department of Justice is available to conduct prosecutions of minor offenses, the commanding officer of the installation may designate one or more Navy or Marine Corps judge advocates of his command, or make necessary arrangements for the designation of one or more Navy or Marine Corps judge advocates stationed in the area, to conduct such prosecutions.

PART F–APPEARANCES BY JUDGE ADVOCATES IN CIVIL COURT AND/OR CIVIL ADMINISTRATIVE PROCEEDINGS

1360 ON BEHALF OF SERVICE MEMBERS

a. No Navy or Marine Corps judge advocate may appear as counsel on behalf of any member of the armed services before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, including a collateral attack upon military justice, court-martial, administrative elimination or investigatory proceeding, unless specifically authorized by the Judge Advocate General or Director, Naval Legal Service, as appropriate. The Expanded Legal Assistance Program, which involves in-court appearances by Navy and Marine Corps judge advocates, has been specifically authorized in section 1906 of this manual.

b. Requests by Navy or Marine Corps judge advocates to appear as counsel before any court, tribunal, body, or agency outlined above will be delivered to the commanding officer or officer in charge of the judge advocate, as appropriate. The request for permission must contain information as to the identity of the member to be represented; a statement of reasons for requesting permission to appear; identity of the court, tribunal, etc., where appearance is desired; nature of action intended to be filed; the nature of relief to be requested; reasons why civilian counsel may not be retained; estimated time required for representation (including preparation, travel and appearance); and any other action previously filed or pending on the same subject matter. The commanding officer or officer in charge will then cause the request to be forwarded to the Judge Advocate General (Code 20), Department of the Navy, Washington, DC 20370, together with comments and recommendations concerning the request. If the request is for a Marine Corps judge advocate, the request, together with comments and recommendations, shall be submitted to the Judge Advocate General (Code 20) via the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20370. Comments and recommendations concerning the request will include, but need not be limited to, the nature and status of any pending military justice, court-martial, administrative elimination, or investigatory proceedings relevant to the request; listing of all counsel participating in the case; the nature and status of any previous civil/military court action in this or related cases; and comment on the availability of the requesting counsel in relation to the overall workload in the office.

c. If the request is approved by the Judge Advocate General or Director, Naval Legal Service, as appropriate, any expenses incurred as a result of such approval will be at no cost to the Government.

Chapter XV

PAYMENTS DUE MENTALLY INCOMPETENT MEMBERS, PHYSICAL EXAMINATIONS OF SUCH MEMBERS, AND TRUSTEE DESIGNATIONS

1501 PURPOSE

1502 SCOPE

1503 AUTHORITY TO APPOINT TRUSTEES TO RECEIVE FEDERAL MONIES

1504 PROCEDURES

1505 RECORDS

1506 TRAVEL ORDERS

1507 STATUS OF PAY ACCOUNT

1508 PROCEDURE FOR DESIGNATION OF A TRUSTEE

1509 EMERGENCY FUNDS

1510 REPORTS AND SUPERVISION OF TRUSTEES
- a. Annual accounting report
- b. Failure to submit a report
- c. Declaration in default
- d. Termination of payments
- e. Demand for payment
- f. Final accounting
- g. Finance Centers

1511 AUTHORITY OF THE JUDGE ADVOCATE GENERAL TO ISSUE INSTRUCTIONS

1501 PURPOSE

To prescribe regulations for implementation of chapter 11 of title 37, *United States Code*, entitled "Payments to Mentally Incompetent Persons." See Appendix A-15-a.

1502 SCOPE

a. Chapter 11 of title 37, *United States Code*, grants authority, in the absence of notice that a legal committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction, for the designation by the Department of the Navy of a trustee to receive the active duty pay and allowances, amounts due for accrued or accumulated leave, or retired pay or retainer pay, that are otherwise payable to a member who is found by competent medical authority to be mentally incapable of managing his/her affairs.

b. The term "member" as used in this chapter refers to:

(1) Members of a uniformed service who are on active duty (other than for training) or who are on the retired list of that service; and

(2) Members of the Fleet Reserve or Fleet Marine Corps Reserve.

1503 AUTHORITY TO APPOINT TRUSTEES TO RECEIVE FEDERAL MONEYS

a. Pursuant to 37 U.S.C. § 602 (1976), the Judge Advocate General and the Deputy Assistant Judge Advocate General (Civil Affairs) [hereafter referred to in this chapter as the DAJAG (CA)] are delegated authority to appoint trustees to receive and administer Federal moneys for members of the naval service.

b. The commanding officer of any naval medical facility may designate an officer of the command to receive and receipt for up to $30 per month from the accrued pay of a member of the naval service who has been found incapable of handling his/her own affairs and is a patient at a naval medical facility under the following conditions:

(1) A trustee has not been designated by cognizant authority and a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction;

(2) The member has no other funds available for use in his/her own behalf; and

(3) The funds are necessary for the purchase of items necessary for the comfort of the member.

This section shall be cited on the pay voucher as authority for payment and receipt of such monthly comfort money.

1504 PROCEDURES

a. The commanding officer of the cognizant naval medical facility shall convene a board of not less than three medical officers or physicians, one of who is specially qualified in the treatment of mental disorders, when there is evidence that a member of the naval service or a member of another uniformed service who is a patient in the naval medical facility may be incapable of handling his/her affairs. Membership of the board may include members of the Reserve components on active or inactive duty.

b. At least one officer on the board, preferably a psychiatrist, shall personally observe the member and ensure that the member's medical record, particularly that portion concerning his/her mental health, is accurate and complete. Each board member shall sign the report of the board and shall certify whether the servicemember is or is not mentally capable of managing his/her affairs.

c. The Judge Advocate General or DAJAG (CA) may direct competent authority to convene a board in accordance with this section to determine the mental capability of a member of the naval service to manage his/her affairs. In appropriate circumstances, a commanding officer or administrator of any Federal medical facility may be requested by the Judge Advocate General or other cognizant authority to convene such a board.

1505 RECORDS

a. The convening authority shall forward one copy of the record of proceedings of each board convened pursuant to section 1504, above, as follows:

(1) *Naval Service*. Judge Advocate General (Code 12), Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332;

(2) *Army*. Commanding General, Finance Center, U.S. Army, Indianapolis, Indiana 46249, Attention: (Central Pay Operations in the case of active-duty personnel, or Retired Pay Division in the case of retired personnel);

(3) *Air Force*. Director of Military Personnel, Headquarters USAF, AFMPC, Washington, D.C. 20030;

(4) *Coast Guard*. Commandant, U.S. Coast Guard (Code C-PS/43), Washington, D.C. 20593;

(5) *National Oceanic and Atmospheric Administration (NOAA)*. Director, NOAA Corps, NOAA, Rockville, Maryland 20852; and

(6) *Public Health Service*. Director, Commissioned Personnel Operations Division (OPM-OM), Room 435, 5600 Fishers Lane, Rockville, Maryland 20857.

b. In the case of a finding that a servicemember is not mentally capable of managing his/her affairs, the convening authority, in the forwarding endorsement, shall set forth the name, relationship, and address of the member's next of kin and such other pertinent data as may be available to assist in identification of a trustee. This additional information need not be furnished where a trustee or other legal representative has been previously designated and the designation is still in effect.

1506 TRAVEL ORDERS

In appropriate cases, the Chief of Naval Personnel or Commandant of the Marine Corps shall issue travel orders to a member of the naval service to appear before an examining board convened for the purpose of determining whether the member is or is not mentally capable of managing his/her affairs. In the case of permanently retired members of the naval service, however, travel expenses in connection with an appearance before a board convened pursuant to section 1504, above, shall be at no cost to the Government unless the Judge Advocate General or DAJAG (CA) determines that unusual hardship exists and directs that appropriate authority fund the travel expenses.

1507 STATUS OF PAY ACCOUNT

The Judge Advocate General or DAJAG (CA) will direct appropriate disbursing officials to suspend the pay of servicemembers found to be mentally incapable of managing their affairs. Thereafter, the Judge Advocate or DAJAG (CA) will direct payment of monies to (1) the appointed trustee; (2) the committee, guardian, or other legal representative appointed by a court of competent jurisdiction; or (3) directly to the member following a determination that the member is capable of managing his/her affairs. Disbursing officers shall seek direction from the Judge Advocate General when information from other sources indicates a member is not competent to manage his/her affairs.

1508 PROCEDURE FOR DESIGNATION OF A TRUSTEE

Upon receipt of a report from medical authorities that a member has been found mentally incapable of managing his/her affairs, the Judge Advocate General or DAJAG (CA) shall initiate action to appoint a trustee, provided a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction. The Judge Advocate General or DAJAG (CA) may direct any appropriate Navy or Marine Corps activity to interview prospective trustees and make recommendations concerning their suitability. The interviewing officer will determine whether the prospective trustee can obtain an appropriate bond as directed by the Judge Advocate General or DAJAG (CA) and ascertain that the prospective trustee is willing to execute an affidavit acknowledging that all monies shall be applied solely to the use and benefit of the member and his/her legal dependents and that no fee, commission, or charge, for any service performed by the trustee except for payment of the required bond, can be made from Federal monies. The interviewing officer will forward recommendations to the Office of the Judge Advocate General for appropriate action.

1509 EMERGENCY FUNDS

Until such time as a trustee is appointed, the Judge Advocate General or DAJAG (CA) may appoint the member's commanding officer or other appropriate official to receive up to $1000 due from the account of the member without the necessity of a bond. The money shall be applied for the benefit of the member and his/her legal dependents.

1510 REPORTS AND SUPERVISION OF TRUSTEES

a. *Annual accounting report*. The trustee designated under this chapter shall submit accounting reports annually or at such times as the Judge Advocate General or DAJAG (CA) directs. The report shall account for all funds received from the Navy or Marine Corps on behalf of the servicemember. NAVJAG Forms 5800/13 (Rev. 8-76) and 5800/13A (Rev. 8-76) will be provided for these reports. When requested by the Judge Advocate General or DAJAG (CA), bank records, receipts, canceled checks, or vouchers shall be attached to the report. Report Control Symbols JAG 5800-5 and 5800-5A have been assigned to the reports.

b. *Failure to submit a report.* If an accounting is not received by the date designated by the Judge Advocate General or DAJAG (CA), or an accounting is forwarded which is unsatisfactory, the Judge Advocate General or DAJAG (CA) shall notify the trustee in writing. The notice shall inform the trustee that he or she is in violation of the regulations concerning trustees promulgated pursuant to 37 U.S.C. §§601-604. The notice shall further state that if a satisfactory accounting is not received by the Judge Advocate General or DAJAG (CA) within an appropriate number of days from the date of receipt of the notification, the trustee will be declared in default of the trustee agreement and shall become liable for any unaccounted for monies.

c. *Declaration in default.* If the trustee fails to submit a satisfactory accounting within the time designated by the Judge Advocate General or DAJAG (CA), the trustee shall be declared by the Judge Advocate General or DAJAG (CA) to be in default of the trustee agreement.

d. *Termination of payments.* If a trustee is declared to be in default of the trustee agreement, the Judge Advocate General or DAJAG (CA) shall request the appropriate Finance Center to terminate payments to the trustee and, if necessary, appoint a successor trustee.

e. *Demand for payment.* At the time of the declaration of such default, the Judge Advocate General or DAJAG (CA) shall notify the defaulting trustee that he or she is in default of the trustee agreement. The surety for the trustee shall also be notified at this time concerning the account. The notifications to the trustee and surety shall state the reasons for default, the amount of indebtedness to the Government, and shall demand payment. The notifications shall also state that if payment, in full, of the monies due the Government is not received by the Office of the Judge Advocate General within an appropriate number of days from the date of receipt of the notifications, the account may be forwarded as the Judge Advocate General or DAJAG (CA) may direct, to the Department of Justice for recovery of the monies through appropriate civil action.

f. *Final accounting.* When payments under this chapter are terminated due to the death of the member, his or her restoration to capacity, the replacement of the trustee, or for any other reason, other than default of the trustee agreement, the trustee shall submit a final accounting to the Judge Advocate General or DAJAG (CA), as appropriate. Upon approval of the report, the trustee and the surety will be discharged from liability. In the event of death or disability of a trustee, the final accounting shall be filed by the legal representative of the trustee.

g. *Finance Centers.* The Commanding Officer, Navy Finance Center, Commanding Officer, Marine Corps Finance Center, or the cognizant disbursing officer shall notify the Judge Advocate General or DAJAG (CA) of any fact affecting the pay of a member who is not mentally capable of managing his/her affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or notice of appointment of a legal representative by a court of competent jurisdiction. At the request of the Judge Advocate General or DAJAG (CA), the cognizant disbursing officer shall report all disbursements from the servicemember's account.

1511 AUTHORITY OF THE JUDGE ADVOCATE GENERAL TO ISSUE INSTRUCTIONS

The Judge Advocate General and the DAJAG (CA) may issue instructions for implementation of this chapter.

officer of any Armed Forces or Public Health Service hospital in which the alleged incompetent is undergoing treatment; by the head of any Veterans' Administration hospital or other public or private institution in which the alleged incompetent is undergoing treatment; or by any other person or organization acting for, and in the best interests of the alleged mental incompetent.

(2) If a trustee has not been designated pursuant to subsection (1) above, the member's commanding officer or the commanding officer of a naval hospital, the Governor, U.S. Naval Home, or the director of a Veterans' Administration hospital, in order to provide for the patient's anticipated needs, may request the **AJAG(CL)** to provide the commanding officer or director with funds, not to exceed $250 due in the accounts of the incompetent person, until a trustee is appointed. See subsection g below for possible release of additional funds by supplemental instruction.

b. *Interview of prospective trustee.* Upon receipt of a request for the designation of a trustee, and after a medical report has been received showing that the member is incapable of handling his affairs, the **AJAG(CL)** may request any appropriate officer in charge, naval legal services office (OinC-NLSO) or the commandant of the naval district in which the prospective trustee resides to designate an officer to interview the prospective trustee and to make a recommendation as to whether the prospective trustee is suitable to be designated as trustee to receive the Navy or Marine Corps pay of the incompetent. The OinC NLSO or the commandant shall forward the report of such interview, together with his recommendations, to the **AJAG(CL)**.

c. *Surety bond.* The trustee designated to receive moneys in behalf of the incompetent shall furnish a suitable bond in all cases when the amounts to be received may be expected to exceed $1000 and in other cases when deemed appropriate by the **AJAG(CL)**. The bond so required and furnished shall have as a surety a company approved by the Federal Government and shall be in such amount as required by the **AJAG(CL)**. Expenses in connection with furnishing of such bond may be paid after the designation of a trustee out of sums due the incompetent. The officer designated to interview the prospective trustee may advise and assist the prospective trustee regarding the securing of the required bond.

d. *Affidavit Requirement.* The interviewing officer will have the prospective trustee execute an affidavit for filing with the **AJAG(CL)**, deposing that any moneys henceforth received by virtue of the designation as trustee shall be applied solely to the use and benefit of the incompetent and his legal dependents, if any, and that no fee, commission, or charge shall be demanded, or in any manner accepted, for any service or services rendered in connection with such designation as trustee.

e. *Designation of Trustee by the AJAG(CL).* After receipt of a medical report which states that an individual is incompetent, and the required affidavit and bond have been furnished, the **AJAG(CL)** may designate a suitable person, not under legal disability, to act as trustee to receive and expend, under instructions of the **AJAG(CL)**, all amounts due from the Navy or Marine Corps, whether active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay.

(1) While a next of kin or other relative of the member is ordinarily considered preferable for designation as trustee, any other person, willing and suitable to act as such may be designated as trustee, permanently or temporarily, unless or until a committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction.

(2) In lieu of the designation of an interviewing officer by the district commandant (as set forth in section 1507b), the **AJAG(CL)** may, when considered feasible by him, request the commanding officer of a naval hospital or the member's commanding officer to interview the prospective trustee, or to have him interviewed, and to have the prospective trustee execute the affidavit described in subsection d above. In order to expedite the proceedings in the interest of the member, if the commanding officer cannot locate any relative willing and suitable to act as trustee and so states in his forwarding endorsement, he may make recommendations for the designation as trustee, permanent or temporary, of any other person willing and suitable to act as such, interview him or have him interviewed, obtain his affidavit, and attach it to the forwarding endorsement. See section 1504c(4) above.

(3) When delay is encountered in locating a relative or other person who is willing and suitable to

act as trustee, or when otherwise considered in the best interests of the member, the commanding officer of a naval hospital or the member's commanding officer may, subject to local law, initiate action for appointment of a committee, guardian, or other legal representative for the member by a court of competent jurisdiction. In order to initiate such action, the commanding officer may suggest appropriate action to the local legal aid society, a cognizant official of the State or municipal public welfare department, or any other State or local official cognizant of the matter under State law, or the local United States Attorney, or a legal officer of the command could take action as may be appropriate under the circumstances and in accordance with local law. No appropriated or nonappropriated naval funds may be expended in connection with proceedings thus initiated by a legal officer of the command, or by others in the civilian community as a consequence of the initiative of the commanding officer. Nor shall funds accrued to the account of the member be expended in connection with any such proceeding except as may be authorized by a court of competent jurisdiction.

f. *Notification to the disbursing officer of the designation of a trustee.* Upon the designation of a trustee to receive moneys due an incompetent, the AJAG(CL), in the case of those incompetents on active duty, shall notify the commanding officer of the incompetent and such commanding officer shall notify the disbursing officer having custody of the incompetent's pay record. The AJAG(CL), in the case of retired personnel of the Navy and Naval Reserve, and personnel of the Fleet Reserve, shall notify the Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), Cleveland, Ohio 44199, and the Chief of Naval Personnel of the designation. In cases of retired personnel of the Marine Corps Reserve, and personnel of the Fleet Marine Corps Reserve the AJAG(CL) shall notify the Commanding Officer, Marine Corps Finance Center (Retired Pay Division), Kansas City, Missouri 64197 of the designation of a trustee. After such notification, payments of all moneys due to the incompetent shall be made by the appropriate officer to the designated trustee.

g. *Notification to the disbursing officer of the designation of commanding officer or director as a temporary fiduciary.* Upon the designation of the commanding officer, the Governor, U.S. Naval Home, or the director of a Veterans' Administration hospital as a temporary fiduciary in accordance with subsection a(2) above to receive sums not to exceed $250 due an incompetent, the AJAG(CL), in the case of an incompetent on active duty, shall notify the commanding officer of the incompetent, and such commanding officer shall notify the disbursing officer having custody of the incompetent's pay record to pay to the temporary fiduciary a designated amount or amounts as they become due, not to exceed $250. However, further sums as they become due in the accounts of the member shall be held in a suspended status pending the formal designation or appointment of a trustee or guardian, or the AJAG(CL), shall issue a supplemental instruction for the further release of funds. The AJAG(CL), in the case of retired personnel of the Navy and Naval Reserve and personnel of the Fleet Reserve, shall notify the Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), Cleveland, Ohio 44199, of the designation. In cases of retired personnel of the Marine Corps, Marine Corps Reserve, and personnel of the Fleet Marine Corps Reserve, the AJAG(CL) shall notify the Commanding Officer Marine Corps Finance Center, (Retired Pay Division), Kansas City, Missouri 64197, of the designation. After such notification, amounts as they become due (other than the $250) shall be held in a suspended status pending the formal designation or appointment of a trustee or guardian, or a supplemental instruction by the AJAG(CL) for release of further Funds.

1508 REPORTS AND SUPERVISION OF TRUSTEES

a. *Annual accounting report.* The trustee designated under this chapter shall submit accounting reports annually or at such time as the AJAG(CL) may desire. NAVJAG Forms 5800/13 (Rev. 8-76) and 5800/13A (Rev. 8-76) are used for these reports. The reports shall show all funds received from the Navy or Marine Corps in behalf of the incompetent, all expenditures made in behalf of the incompetent, and a statement of the condition of the trustee account at the time of the submission of the report. When requested by the AJAG(CL), it shall be accompanied by receipts, canceled checks, or vouchers covering expenditures. If the trustee fails to report promptly at the end of any annual reporting period, or at such other time as the AJAG(CL) desires, the AJAG(CL) may, in his discretion, cause further payments to such trustee to cease and may, if deemed advisable, designate a successor trustee, not under legal disability, to receive the future payments of moneys due the incompetent. Upon request of the AJAG(CL), the trustee shall furnish for examination all bank statements of the trustee checking accounts, trustee savings account pass books or trustee savings account bank statements, or other records concerning the trustee account. Reports Control Symbols JAG 5800-5 and 5800-5A have been assigned to these reports.

b. *Termination of payments to trustee.* Payments due an incompetent member shall cease to be paid to the trustee upon receipt of notification by the disbursing officer; Commanding Officer, U.S. Navy Finance Center (Retired Pay Department); or Commanding Officer Marine Corps Finance Center (Retired Pay Division) of the occurrence of any of the following:

(1) Death of the incompetent;

(2) Death or disability of the trustee appointed;

(3) Receipt of notice that a committee, guardian, or other legal representative has been appointed for the incompetent by a court of competent jurisdiction;

(4) Receipt of notification from the AJAG(CL) of the failure of a trustee to render any of the required reports;

(5) Receipt of notification by the AJAG(CL) that there is probable cause to believe that there is improper use of moneys received on behalf of the incompetent;

(6) Receipt of notification from the AJAG(CL) that a board of medical officers or other appropriate medical authorities have found the former incompetent mentally capable of managing his own affairs. (The AJAG(CL) may, at his discretion, accept the findings of a Veterans' Administration hospital or of a Public Health Service hospital, or the findings of other public or private institutions, that a person formerly found incompetent is not competent.); or

(7) Receipt of notification that the AJAG(CL) deems it to be in the best interest of the incompetent.

In the event of termination of payments under subsections (2), (4), (5), or (7) above, the AJAG(CL) may appoint a successor trustee under the provisions of this chapter.

c. *Notification by the disbursing officer to the AJAG(CL) of all payments made to trustee.* The disbursing officer carrying the active duty pay account of an incompetent shall report to the AJAG(CL) all payments made to a trustee and shall notify the AJAG(CL) when the accounts of the incompetent have been transferred to another activity.

d. *Notification to the AJAG(CL) of change in status of the pay account of the incompetent.* The Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), and the Commanding Officer Marine Corps Finance Center (Retired Pay Division) shall notify the AJAG(CL) if the retired pay is waived, in whole or in part, in favor of Veterans' Administration compensation. In addition, the respective officers shall notify the AJAG(CL) of any other change in the status of the retired pay account of the incompetent, such as caused by death, or the appointment of a legal guardian, committee, or other legal representative by a court of competent jurisdiction. Said officer shall furnish the AJAG(CL) with a report as to the amount of pay paid trustees annually, or as requested, or at the time of a change in the status of the trusteeship.

1509 REQUIREMENT THAT A TRUSTEE SHALL FILE A FINAL ACCOUNTING REPORT

When payments under this chapter are terminated, the trustee shall file a final accounting report with the AJAG(CL). When the final accounting report has been approved, the trustee shall be discharged by the AJAG(CL) and the surety released on its bond. In the event of death or disability of a trustee, the final accounting report shall be filed by his legal representative.

1510 AUTHORITY OF THE JUDGE ADVOCATE GENERAL TO ISSUE IMPLEMENTING INSTRUCTIONS

All powers given the AJAG(CL) in this chapter are also vested in the Judge Advocate General. The Judge Advocate General may issue such further instructions, not in conflict with this chapter, as may be necessary to give full force and effect to this chapter.

Chapter XVIII

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1801 GENERAL

This chapter, published with the concurrence of the Commissioner of Customs, sets forth the various provisions of law and regulations which govern exemptions from customs duties and internal revenue taxes available to military and civilian personnel. It does not, however, detail in their entirety all of the Customs Regulations that may be applicable to every situation. Generally speaking, customs duties must be paid on articles imported or brought into the customs territory of the United States, which consists of the 50 States, the District of Columbia, and Puerto Rico, unless, and to the extent, an exemption may be applicable. Among the articles which may be within an exemption are:

a. Articles accompanying returning residents and unaccompanied articles from insular possessions of the United States.

b. Articles accompanying returning nonresidents

c. Personal and household effects of persons in the service of the United States returning at the termination of extended duty assignments outside the customs territory of the United States.

d. Sea-store cigarettes.

e. Articles sent as bona fide gifts from persons in foreign countries to persons in the United States.

This chapter also includes various other provisions of law and regulations relating to import and export restrictions of particular interest to military personnel. See Appendix A-18-a for a tabular portrayal of customs exemptions.

PART B–ARTICLES ACQUIRED BY RETURNING RESIDENTS

1802 BASIS FOR EXEMPTION

Exemptions for returning residents are provided in items 813.30 and 813.31 of the Tariff Schedules of the United States (19 USC 1202). Item 813.30 sets forth the articles which may be exempted, and item 813.31 sets value limitations and time requirements. These items must be read together to determine the basis for the exemption.

1803 ELIGIBILITY FOR EXEMPTION

a. *Visit to foreign country or possession of the United States.* The resident must be returning from:

(1) The Virgin Islands of the United States, without regard to the length of time the person has remained outside the territorial limits of the United States; or

(2) Mexico, without regard to length of time a returning resident has remained outside the territorial limits of the United States, unless the resident returns through a port as to which there is in effect a special regulation or instruction requiring that the returning resident, in order to obtain the benefit of the $300 exemption for articles, shall have remained beyond the territorial limits of the United States for such period, not to exceed 24 hours, as shall be specified in the special regulation or instruction; or

(3) Any other country or any other possession of the United States except Puerto Rico (see section 1801) after having remained outside the customs territory of the United States for a period of not less than 48 hours.

b. *Frequency of exemptions.* The resident must not have claimed an exemption under this item within the 30 days immediately preceding his arrival. If he has, only $25 worth of articles for personal or household use will be exempted.

1804 COMPUTATION OF TIME REQUIREMENTS

a. *Computation of the 48-hour period.* The 48-hour period abroad must be computed exactly. For example, a resident leaving the United States territory at 1330 on 1 June would complete the 48-hour period at 1330 on 3 June.

b. *Computation of the 30-day period.* The 30-day period immediately preceding the resident's return is computed by excluding the day of arrival and counting backward 30 days. Thus, a resident arriving on 28 May would not be entitled to the exemption if he had taken advantage of such exemption on or after the preceding 28 April.

1805 SCOPE OF EXEMPTION

a. *Articles exempted.* Each resident returning to the customs territory of the United States is entitled to exemption from duty and internal revenue tax on articles for his personal or household use which were purchased or otherwise acquired abroad merely as an incident of the journey from which he is returning and which accompany him on his arrival. The exemption also applies to articles not accompanying the resident which were acquired in American Samoa, Guam, or the Virgin Islands of the United States. This exemption does not apply to articles intended for sale or acquired for the account of another person, with or without compensation for the service rendered, but may include articles intended for use as bona fide gifts. See Part I concerning importation of privately-owned motor vehicles.

b. *Value limitations.* The aggregate fair retail value in the country of acquisition of such articles shall not exceed $300, or in the case of a resident arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, $600, of which not more than $300 shall have been acquired elsewhere than in such insular possessions.

c. *Alcoholic beverages.* Alcoholic beverages may be included in the exemption of an individual who has attained the age of 21, subject to the following limitations:

(1) One liter in the case of an individual who does not arrive directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States.

(2) Four liters in the case of an individual who arrives directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, not more than one liter of which shall have been acquired elsewhere than in such insular possessions.

(3) Customs will not release alcoholic beverages for use in any state in violation of its laws. Check with the liquor authorities of the state in which the anticipated port of arrival from abroad is located.

d. *Cigars and cigarettes.* U.S. domestic cigars and cigarettes which were exported under internal revenue laws and regulations without the payment of tax may be included within this exemption. Not more than 200 cigarettes and 100 cigars may be included, except that not more than 1,000 cigarettes, not more than 200 of which shall have been acquired elsewhere than in American Samoa, Guam, or the Virgin Islands of the United States may be included.

e. *Flat duty rate.* Articles valued at up to $600 in excess of the exemption are subject to a flat 10% rate of duty based on the fair retail value in the country of acquisition when they accompany the returning resident. The flat rate is only 5% for articles acquired in American Samoa, Guam, or the Virgin Islands of the United States. The 5% rate on articles from insular possessions of the United States applies whether or not the articles accompany the resident on his arrival.

1806 FAMILY GROUPING OF EXEMPTIONS

When members of a family *residing in one household* travel together on their return to the United States, the exemption to which the individual members of the family are entitled may be grouped and allowed without regard to which member is the owner of the articles, except in the case of alcoholic beverages when a member has not attained the age of 21. Furthermore, the flat rate of duty on articles valued at up to $600 in excess of the exemption may be grouped. For example, an eligible returning family of four could import up to $2400 worth duty free of articles and an additional $2400 of articles subject to the 5% flat rate.

PART C–ARTICLES ACCOMPANYING NONRESIDENTS

1807 BASIS FOR EXEMPTION

Exemptions for persons arriving in the United States who are not returning residents are contained in items 812.10-812.40 of the Tariff Schedules of the United States (19 U.S.C. 1202). Customs regulations pertaining to these provisions are set forth in 19 CFR § § 148.41-148.46.

1808 ELIGIBILITY FOR EXEMPTION

In TD 72-92 the Bureau of Customs held that a person who would otherwise be considered a returning resident of the United States may be classified as a nonresident on entering the United States for a short visit before returning abroad. As a result, military and civilian personnel assigned to extended duty outside the customs territory of the United States, and members of their families, returning to the United States for a short visit, such as for temporary duty, or on leave, or for other personal reasons, with or without orders, may claim customs status either as a returning U.S. resident (*See* Part B above) or as a nonresident.

1809 SCOPE OF EXEMPTION

a. *Articles for personal use.* All wearing apparel, articles of personal adornment, toilet articles, and other similar personal effects. The latter includes all articles intended and appropriate for the personal use of the nonresident while traveling, such as hunting and fishing equipment, pets etc. The exemption applies only to articles actually owned by the nonresident and in his possession at the time of, or prior to, departure for the United States. Articles so entered must be intended for personal use only and not as a gift or for sale.

b. *Gifts.* An arriving nonresident who intends to remain in the United States for not less than 72 hours may claim as free of duty and internal revenue tax articles not over $100 in aggregate value which accompany him and are to be disposed of as bona fide gifts. (See 1809(c) for limitations on alcoholic beverages, cigars, and cigarettes.) This exemption for gifts may be allowed only if the nonresident has not claimed the exemption within the immediately preceding six months.

c. *Tobacco products and alcoholic beverages.*

(1) *For personal use.* One hundred cigars or 200 cigarettes, or 2 kilograms of smoking tobacco, and not over 1 liter of alcoholic beverages may be entered duty free by an adult nonresident for personal use and not for sale or gift purposes. The exemption for tobacco products may be applied proportionately; for example, 50 cigars and 100 cigarettes, or 25 cigars, 50 cigarettes, and 1 kilogram of smoking tobacco.

(2) *For gifts.* A nonresident who is allowed the $100 gift exemption may not include alcoholic beverages or cigarettes but may include up to 100 cigars.

d. *Flat duty rate.* Articles for personal or household use, or for use as bona fide gifts valued up to $600 in excess of the exemption are subject to a flat 10% rate of duty based on the fair retail value in the country of acquisition if they accompany the nonresident on his arrival. The flat rate is only 5% for articles acquired in American Samoa, Guam, or the Virgin Islands of the United States. The 5% rate on articles from these insular possessions of the United States applies whether or not the articles accompany the nonresident on his arrival.

PART D – PERSONAL AND HOUSEHOLD EFFECTS EXEMPTIONS OF PERSONS IN THE SERVICE OF THE UNITED STATES RETURNING UPON THE TERMINATION OF EXTENDED DUTY OUTSIDE THE CUSTOMS TERRITORY OF THE UNITED STATES

1810 BASIS FOR EXEMPTION

Exemptions for the personal and household effects of persons in the service of the United States who return upon termination of extended duty at a post or station outside the customs territory of the United States are provided in item 817.00 of the Tariff Schedules of the United States (19 USC 1202). The statute providing this exemption empowers the Secretary of the Treasury to prescribe limitations on the importation of alcoholic beverages and tobacco products, and to define the requirement that the person "returns to the United States upon the termination of assignment to extended duty." Limitations and definitions made pursuant to this statute are contained in Customs Regulations, 19 CFR § 148.74.

1811 ELIGIBILITY FOR EXEMPTION

a. *Persons eligible.* This exemption is available to any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty at a post or station outside the customs territory of the United States, or to returning members of his family who have resided with him at such post or station, or to any person evacuated to the United States under Government orders or instructions, whether in the service of the United States or not. Employees of the American Red Cross, of contractors employed by the United States Government and of military banks, and persons in a comparable category are not considered to be in the service of the United States Government even though they are on duty with the Navy in an overseas area.

b. *Extended duty requirement.* Under Customs Regulations, 19 CFR § 148.74(d), the requirement that the person "returns to the United States upon the termination of assignment to extended duty" shall be considered met in any one of the following cases:

(1) The person is returning upon the termination of a tour of duty outside the customs territory of the United States of at least 140 days duration.

(2) The person is returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the customs territory of the United States, regardless of the duration of the duty.

(3) The person returns to the United States upon the termination of a tour of duty at any time after leaving the United States for duty of not less than 140 days outside the customs territory of the United States.

(4) The person, although not returning to the United States, is ordered by the Government agency involved from duty at a post or station outside the customs territory of the United States to duty at another post or station outside the customs territory of the United States necessitating the return to the United States of his personal and household effects.

(5) A crewmember, including a member of a command, serving on a United States naval vessel or supporting naval vessel when it departs from the United States on an intended deployment of 120 days or more outside the country and who continues to serve on the vessel until it returns to the United States may be considered as returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the customs territory of the United States, regardless of the duration of the deployment, under the Customs Regulations, 19 CFR § 148.74(d)(2).

c. *Interim returns not included.* A person returning on leave, except reemployment leave at the termination of assignment to extended duty as defined in section 1808b, or otherwise returning before the termination of an assignment to extended duty outside the customs territory of the United States, with or without orders covering the return, is not entitled to this exemption. An individual returning to the United States under orders on a temporary duty assignment at the termination of which he is returned to his duty station abroad to resume his regular duties is not regarded as returning to the United States at the termination of an assignment to extended duty outside the customs territory of the United States.

1812 SCOPE OF EXEMPTION

a. *Articles exempted.* This exemption from duty and internal revenue tax applies to personal and household effects of the eligible individuals. It does not apply to articles intended for sale, or imported for the account of any person not entitled to the exemption. Although this does not prohibit the subsequent use of such articles as bona fide gifts, it should be noted that any reimbursement or compensation, even though there is no profit to the importer, will disqualify an article as a bona fide gift. See Part I concerning importation of privately-owned motor vehicles.

b. *Possession abroad requirement.* There is no period of use abroad required, but articles not in the possession of the person claiming the exemption while abroad cannot be considered personal and household effects within the meaning of the law as interpreted by the Customs Bureau. The Bureau has held that physical possession is encompassed within the meaning of the term "possession abroad." Circumstances whereby the importer has been in such proximity to the specific property that immediate control or possession of the articles may have occurred upon or subsequent to sale constitute physical possession (e.g., the purchase of an automobile upon inspection of the specific vehicle in the showroom of a dealer). Mere contingent possibility of possession does not constitute "possession abroad." Situations in which this requirement is not met are:

(1) A person orders a car which is to be shipped from a factory in another city directly to the United States without being in the proximity of the purchaser prior to shipment. This is not sufficient to meet the requirement of possession.

(2) Purchaser designates a friend to take possession. Possession by an agent is never sufficient.

c. *Alcoholic beverages and tobacco products.* A total of not more than one gallon of alcoholic beverages and not more than 100 cigars may be imported free of duty and internal revenue tax as personal effects subject to the following additional limitations of Customs Regulations, 19 CFR § 148.74(c):

(1) These articles must accompany the person making the claim for free entry upon his arrival in the United States.

(2) Not more than one quart of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions.

(3) The individual has not concurrently claimed exemption as a returning resident under items 813.30 and 813.31 of the Tariff Schedules of the United States as discussed in sec. 1805 of this chapter.

(4) If the person claiming the exemption is other than one in the service of the United States, he shall have attained the age of 21. Customs officials will not release alcoholic beverages for use in any state in violation of its laws.

(5) Limitations on all tobacco products other than cigars correspond to those set forth in sec. 1805d of this chapter.

(6) As this exemption is subject to regulation by the Commissioner of Customs, it may be changed at any time on short notice.

1813 WAIVERS IN CASES OF HARDSHIP

In any case where the limitation on the quantity of alcoholic beverages and tobacco products, or the failure of the person to meet the requirement that he is returning from "extended duty," as defined in section 1808b above, will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement if he deems such waiver warranted by the facts. Any situation believed to be within this provision may be submitted to the Judge Advocate General for preliminary evaluation and submission of a request for waiver to the Commissioner in appropriate cases.

PART E–SPECIAL EXEMPTION FOR SEA-STORE CIGARETTES

1814 BASIS FOR EXEMPTION

This is an administrative exemption from duty and any internal revenue tax, imposable by reason of importation, made by the Commissioner of Customs under the authority of 19 USC 1321(a)(2)(B).

1815 ELIGIBILITY FOR EXEMPTION

When a U.S. naval vessel has proceeded beyond the territorial limits of the United States, tax-free (sea-store) cigarettes may be sold to crew members. If, however, the vessel does not visit a foreign port or other port outside the customs territory of the United States on such a trip, and if the requirements of section 1808b of this chapter relating to extended duty are not met, the exemptions provided for in parts B and C are not applicable to U.S. naval personnel. Under these circumstances, however, the expense and inconvenience to the Government of collecting duties on small quantities of cigarettes would be disproportionate to the amount of revenue which would be collected. Accordingly, the Commissioner of Customs has granted an administrative exemption for limited quantities of tax-free cigarettes.

1816 SCOPE OF EXEMPTION

Under the circumstances described in section 1815, two opened packs of cigarettes may be taken ashore within the Customs territory of the United States by a crew member at any one time for his own personal use without duty or internal revenue tax liability and without customs entry. The total quantity of such cigarettes brought ashore by any crew member under this exemption after any voyage beyond the territorial limits of the United States shall not exceed 15 packs.

1817 ENFORCEMENT

The policing of the landing of cigarettes under this exemption is primarily the responsibility of naval authorities. Additional regulations or more restrictive limitations may be imposed by cognizant commanders if deemed necessary to prevent violations.

PART F–GIFTS SENT FROM FOREIGN COUNTRIES

1818 BASIS FOR EXEMPTION

Exemption from duty and any tax imposed by reason of importation of gifts is provided in 19 USC 1321(a)(2)(A) and Customs Regulations, 19 CFR § 145.32.

1819 ELIGIBILITY FOR EXEMPTION

Persons in a foreign country are authorized to send gifts to persons in the United States.

1820 SCOPE OF EXEMPTION

a. *Bona fide gift requirement.* The articles must be bona fide gifts, that is, given outright, without compensation or promise of compensation.

b. *Value limitations.* The total value of all gift shipments received in one day by any donee with exemption from duty and tax may not exceed $25.00. This amount is increased to $40.00 if the gift is from American Samoa, Guam, or the Virgin Islands of the United States. Value is the fair retail value in the country of shipment.

c. *Exclusion of alcoholic beverages and tobacco products.* Alcoholic beverages and tobacco products are not included in this exemption from duty, nor are perfumes containing alcohol if the shipment is valued at more than $5.00.

1821 MAILING OF GIFTS

Detailed mailing procedures are contained in OPNAVINST 5112.1 series, U.S. Navy Postal Instructions, chap. 7, sec. 4.

PART G—MISCELLANEOUS PROVISIONS

1822 ALCOHOLIC BEVERAGES, CIGARS, AND CIGARETTES FROM PUERTO RICO

Puerto Rico is included within the customs territory of the United States, and accordingly customs duties are not applicable to Puerto Rican alcoholic beverages, cigars, or cigarettes brought to the United States. However, when they are brought from Puerto Rico into the United States they are subject to a tax equal to the internal revenue tax imposed on the production in the United States of like items. Neither of the exemptions discussed in Parts B and C is applicable. Inspection and collection of this tax is normally performed by customs officers acting for the Internal Revenue Service.

1823 STATE LAWS

The Federal law does not provide exemption from State liquor or tobacco taxes. Customs officials will not release alcoholic beverages or tobacco products if they are to be shipped into a state in violation of its laws.

1824 OTHER REGULATIONS

Information contained herein is not intended to alter Navy Regulations, Art. 1150, or other regulations issued by cognizant commanders governing or prohibiting transportation of alcoholic beverages aboard naval aircraft, ships, or craft, including MSC vessels, or their shipment as household effects.

1825 ABUSE OF PRIVILEGES

Duty-free and tax-free importation of articles of any type and in any quantity is a privilege under the law which may be readily lost in case of abuse. The alcoholic beverage and tobacco allowance in the extended duty exemption, as well as the administrative exemptions for gifts and sea-store cigarettes, are subject to regulation by the Commissioner of Customs. The Commissioner has indicated in the past that abuses of exemptions may result in their curtailment.

1826 ACTION AVAILABLE TO COMMANDS

Several courses of action may be taken by commanders, particularly overseas, to detect and reduce abuses of existing privileges.

a. *Quantity limitations.* Quantity limitations may be placed on the sales of alcoholic beverages and tobacco products.

b. *Educational programs.* Educational programs may include explanations of the advantages of present exemptions, possible loss of exemptions by reason of abuse, and amenability of violators to civil penalties, criminal prosecution, and forfeiture of the merchandise involved.

c. *Foreign exchange and currency violations.* The special exemption for sea-store cigarettes reflected in Part D of this chapter is in recognition of the fact that sales cannot be so precisely regulated that each crew member will have consumed all such cigarettes in his possession at the time of the return of the vessel within the territorial limits of the United States. Nevertheless, sales should be conducted with the objective of having only minimal quantities of such cigarettes in the hands of crew members at the time of such return. Even when the vessel is deployed on an extended cruise beyond the customs territory of the United States, a build-up of excessive quantities of sea-store cigarettes in the hands of crew members should be precluded to prevent violations of customs laws of host countries. In this regard, it should be noted that, in a number of countries, little or no foreign exchange or customs control is exercised by the host country within the United States facilities or over United States personnel, vessels, vehicles, or aircraft. It is the responsibility of all Navy and Marine Corps overseas commanders to take such measures as may be required to prevent violations of applicable local laws or regulations concerning currency and customs matters. Additionally, all personnel should be instructed and cautioned regarding the punitive consequences to themselves and the deleterious effect on the continued presence of United States forces in a foreign country and their relations with the host government which illegal currency transactions and customs violations can produce.

d. *Household effects shipments.* Personnel shipping household effects from overseas to the United States should be reminded of their responsibilities incident thereto. It is imperative that they read and be aware of the contents of the "Owner's U.S. Customs Declaration" (DD Form 1252) covering duty-free entry of personal property shipped to the United States. Specific attention should be called to the provision indicating that the owner will not ship personal property to the United States as an accommodation for others, or for sale, barter, or exchange. A further safeguard by commanders against violations of customs regulations is possible through assurance that commercial contractors and carriers do not pack or load for shipment any article prohibited by pertinent law or regulations. Packing and crating contractors and all carriers providing through bill of lading service from overseas areas will be instructed not to pack or load for shipment articles prohibited by applicable law or regulations. If such articles are presented by the owner to be included in a household goods shipment, a representative of the commercial concern will be directed to report the circumstances to the transportation or inspecting officer. This should not be construed as in any way relieving the owner of his responsibilities, but is designed to assist in detecting and discouraging violations.

1827 PROSECUTION OF VIOLATIONS

Any person who violates the customs laws or regulations discussed above may be prosecuted either in a Federal court or, if subject to the UCMJ, before a court-martial. As an example of the punishment that may be imposed, unlawful importation of tax-free cigarettes or other tobacco products may be punished under 18 USC 545 by a fine of not more than $10,000 or imprisonment for not more than five years, or both, if tried in a Federal court. If tried by a general court-martial as a crime not capital under Article 134 of the UCMJ, authorized punishments could include confinement at hard labor for not more than five years, total forfeitures, reduction to the lowest pay grade, and a punitive discharge.

1828 METRIC MEASUREMENTS

Title 27 of the Code of Federal Regulations has been amended to implement the adoption of metric standards of fill for alcoholic beverages, and deals basically with the marking, labeling, and record-keeping aspects of alcoholic beverage importation. As such, these changes are primarily aimed at commercial business dealers and do not deal directly with personal exemptions from tariff schedules. It is clear, however, that by 1980 many alcoholic beverage containers designed for import into the United States will be utilizing the metric system of measurement. The following conversion chart has been prepared for the use of legal officers if questions regarding this change should arise:

One quart equals 0.95 liters.
One gallon equals 3.785 liters.
One pound equals 0.45 kilograms.

PART H—PROHIBITED AND RESTRICTED ARTICLES

1829 GENERAL

Certain merchandise is either prohibited from entering the United States or must meet special requirements. The information set forth in this part is general in nature, and the lists below are incomplete. Guidance in specific cases may be sought from the U.S. Consulate, or a request for additional information may be addressed to the Judge Advocate General.

1830 RESTRICTED ARTICLES

Restricted articles include the following:

a. Firearms and ammunition;

b. Fruits, vegetables, plants, and plant products;

c. Livestock and meats;

d. Pets; and

e. Certain trademarked articles acquired abroad. The importation of merchandise of foreign or domestic manufacture is prohibited if such merchandise bears a mark or name which copies or simulates a trademark or trade name recorded with the Treasury Department. An exemption can be claimed for one article of a type bearing a protected trademark if the article accompanies the person entering the United States, is for his personal use, and is not for resale. If sold within one year of importation, the article or its value is subject to forfeiture. This exemption may only be used by the same person once each 30 days for the same type of merchandise. A greater quantity of the article may be imported with the written consent of the owner of the protected trademark or trade name. The consent does not apply to articles mailed to the United States or to articles imported for resale. A copy of the list of protected items may be obtained from any U.S. Customs Office.

f. Endangered fish and wildlife, marine mammals, and marine mammal products (*e.g.*, scrimshaw). The importation of such items is prohibited, with certain exceptions, which exceptions, require in most instances a permit from, certification by, or registration with the Department of Commerce. Refer to 16 U.S.C. §§1361-1384 and 50 CFR Part 216.

1831 PROHIBITED ARTICLES

Prohibited articles include the following:

a. Lottery tickets;

b. Narcotics;

c. Obscene material;

d. Printed matter advocating treason or insurrection against the United States;

e. Switch-blade knives; and

f. Wild bird feathers.

1832 ARTICLES REQUIRING TREASURY LICENSE FOR IMPORTATION

a. *Foreign Assets Control Regulations.* The Foreign Assets Control Regulations apply to both the purchase abroad and the importation of all merchandise originating in certain countries, and to all goods containing components from certain countries. Items from these countries are prohibited without a Treasury license which may be considered unavailable for all practical purposes to military or civilian government personnel. For items subject to duty, the rate will be considerably higher than the rate applied to goods imported from other countries.

b. *Copies of regulations.* Copies of current Foreign Assets Control Regulations may be obtained from the Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

PART I–IMPORTATION OF PRIVATELY OWNED MOTOR VEHICLES

1833 FEDERAL SAFETY STANDARDS

a. *Requirements.* Motor vehicles and motor vehicle equipment manufactured on or after 1 January 1968 and imported into the United States are subject to Federal motor vehicle safety standards promulgated by the Department of Transportation in 23 CFR Part 255. In general, a motor vehicle manufactured on or after 1 January 1968 will not be permitted entry into the United States unless it conforms to applicable safety standards in effect at the time the vehicle was manufactured.

b. *Entry procedures.* Compliance with these safety standards should be established by certification in the form of a label or tag permanently affixed to the vehicle, and customs officials will not refuse entry to a vehicle which bears such a valid certification. Vehicles may be cleared through customs without such certification in certain circumstances described in 19 CFR Part 12 including the following:

(1) Vehicles which were manufactured before the effective date of the safety standards. (A declara-

tion to this effect by the importer or consignee is required.)

(2) Vehicles not manufactured in conformity with the safety standards, but which have been altered to conform prior to importation. (A certification by the manufacturer or contractor is required.); and

(3) Vehicles which do not conform to the safety standards but which the owners promise to bring into conformity within 90 days and for which the owners post bond to that effect.

PART J—IMPORTATION OF PRIVATELY OWNED FIREARMS AND AMMUNITION

1834 BACKGROUND

The Gun Control Act of 1968, P.L. 90-18, 18 U.S.C. §§921-928, sets forth the controls concerning the transportation, shipment, receipt, and importation of privately-owned firearms and ammunition. The Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, is responsible for the general administration and enforcement of the Act. The Bureau of Customs has responsibility for the enforcement of the import aspects as they relate primarily to the clearance of imported firearms and ammunition. Specific provisions concerning the importation of firearms and ammunition by members of the U.S. Armed Forces are found in 26 CFR §178.114.

1835 SERVICE REGULATIONS

Chapter 10, DOD Instruction 5030.49-R of 15 February 1973 (Customs Inspections), contains detailed instructions implementing the provisions of the Gun Control Act of 1968 and related laws and regulations as they apply to the importation of firearms and ammunition by DOD personnel. The chapter, however, does not apply to the control, registration or shipment of war trophy firearms, which are governed by OPNAVINST 3460/MCO 5800 series. DOD Instruction 5030.49-R can be obtained from the Naval Publications and Forms Center, Philadelphia, Pennsylvania, as enclosure (1) to OPNAVINST 5840.3 of 26 February 1973.

PART K—IMPORTATION OF PRIVATELY OWNED PLEASURE BOATS

1836 FEDERAL SAFETY STANDARDS

a. Foreign manufactured non-commercial pleasure boats entering the United States after November 1, 1972, are subject to the Federal Boat Safety Act of 1971 (46 USC *et seq.*), and Coast Guard Safety Regulations in 33 CFR Parts 181 and 183. In general, entry is not permitted unless such vessels are in compliance with safety standards and compliance is certified or the vessel is subject to certain specified exceptions.

b. Effective July 10, 1976, Customs Regulations (19 CFR Part 12) were amended to prescribe procedures. Evidence of compliance generally required for entry includes a certificate of compliance affixed to the vessel by the manufacturer or importer. Vessels may be cleared through customs without such certification in certain circumstances specified in the regulations including the following:

(1) Where a declaration is filed to the effect that the vessel was manufactured prior to the effective date of the safety standards.

(2) Where a declaration is filed, along with an appropriate certification to the effect that the non-complying vessel has been altered to comply with specified standards.

(3) Where the vessel has been previously exempted from the standards by the Coast Guard.

(4) Where the importer certifies by declaration and posts a performance bond to assure that the vessel will be brought into compliance within 90 days following entry and that the vessel will neither be sold nor used prior to completion of such alterations.

PART L—EXPORT CONTROLS

1837 REGULATIONS

In addition to the export regulations exercised by the Department of Commerce (15 CFR 368-99), the export of arms and defense articles on the U.S. Munitions List is subject to control and licensing by the Department of State and the Department of Defense. For regulations see: 22 CFR, Subchapter M of Chapter I, DOD Directive 5030.28 series, SECNAV Instruction 5740.20 series; and OPNAV Instruction 4000.36 series.

Chapter XIX
LEGAL ASSISTANCE

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1901 PURPOSE

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the naval service since 1943. The program has improved the morale of personnel and reduced disciplinary problems since its inception. The purpose of this Chapter is to provide guidelines for the continuation of the program.

1902 POLICY

Personal problems that remain unresolved adversely affect morale and efficiency and frequently result in behavior requiring disciplinary or administrative action. Prompt and understanding aid in resolving these problems is an effective preventive. Accordingly, it is the policy of the Department of the Navy to maintain from available resources a legal assistance program to make eligible persons aware of their legal rights and obligations and to assist military personnel and their dependents in obtaining adequate legal advice and services from within the military service.

1903 LEGAL ASSISTANCE OFFICERS

All Navy and Marine Corps judge advocates on active duty or inactive duty for training, and all civilian lawyers under the cognizance of the Judge Advocate General who are members of the bar of a Federal court or of the highest court of any State, or, in foreign countries, who are authorized to practice law in the courts of the country concerned, are legal assistance officers. While performing legal assistance duties, legal assistance officers shall be guided by the Canons, Ethical Considerations, and Disciplinary Rules of the Code of Professional Responsibility of the American Bar Association and the Canons of Professional Ethics and supplemental Federal Ethical Considerations of the Federal Bar Association. Persons who are authorized to practice law in the courts of a foreign country shall be guided by similar standards which have been promulgated for the guidance of lawyers in the country concerned.

1904 LEGAL ASSISTANCE OFFICES

a. *Establishment of offices.* A legal assistance office shall be established at each Navy Legal Service Office and at each Marine Corps command exercising general court-martial jurisdiction. In addition, any commanding officer having a legal assistance officer attached, assigned, or available to his command may establish a legal assistance office. The legal assistance office shall be disestablished when no person qualified to perform legal assistance duties is attached, assigned, or available to the command. Whenever a legal assistance office is established or disestablished, the Judge Advocate General shall be notified.

b. *Location.* Each legal assistance office should be conveniently located so as to be easily accessible to all persons eligible for legal assistance, and should be provided with facilities which will enable private consultation with legal assistance clients. Information as to the location and hours of the legal assistance office and the nature of the services available shall be published periodically in local directives and posted in appropriate conspicuous places.

c. *Legal assistance reference material.* The Judge Advocate General will, from time to time, furnish directly to legal assistance offices such professional information, reference material, and procedural suggestions and recommendations as he may deem advisable to enable legal assistance officers to render legal assistance services. Reference materials and publications so furnished are the property of the Office of the Judge Advocate General and shall remain in the legal assistance office and be carefully preserved. If the legal assistance office is disestablished, all such material shall be returned to the Judge Advocate General.

d. *Action to be taken by commands not having a legal assistance office.* All commands shall maintain in a convenient location, and publish from time to time, a current list of the legal assistance offices serving the command and a list of local civilian lawyer-referral committees or services.

1905 PERSONS ELIGIBLE FOR ASSISTANCE

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. The service is intended primarily for the benefit of personnel during active service, but is to be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the United States Armed Forces, and their dependents, when and if the workload of the office renders such service feasible.

1906 FUNCTIONS OF LEGAL ASSISTANCE OFFICERS

a. *Basic duties*. A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him:

(1) Shall counsel, advise, and assist persons eligible for assistance in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in section 1909.

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings.

(3) Shall, in appropriate cases and under guidelines contained in Appendix 19-a-(1) serve as advocate and counsel for, and provide full legal representation including representation in court to, persons eligible for assistance in connection with their personal legal problems.

(4) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(5) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and SECNAV Instruction 5350.5 series.

b. *Nature of assistance*. Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

c. *Duty to client*. A legal assistance officer should exercise his independent professional judgement on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this Chapter.

d. *Professional legal advice*. Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under Canon 3 of the Code of Professional Responsibility of the American Bar Association and particularly EC 3-2, 3-5, 3-6, and DR 3-101 (A).

1907 LIMITATIONS ON SERVICE PROVIDED

a. *Assistance in official military matters*. Legal assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a serviceman accused or suspected of an offense or of conduct leading to administrative proceedings will request advice from the legal assistance officer. In such a case, he should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for a respondent, or counsel for a party.

b. *Domestic-relations cases*. In domestic-relations cases, a legal assistance officer may, with the knowledge and consent of both parties, and where neither party is represented by counsel, consult both parties without impropriety.

c. *Nonlegal advice*. The legal assistance officer, while giving legal advice, may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

d. *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the interests of the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. §203, and 18 U.S.C. §205.

e. *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone.

1908 CONFIDENTIAL AND PRIVILEGED CHARACTER OF SERVICE PROVIDED

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in Canon 4 of the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by section 1913. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. While case files are not subject to the control of the Department of the Navy and therefore do not constitute a "system of records" within the meaning of the Privacy Act of 1974 (5 U.S.C. § 552a), no information which identifies an individual legal assistance client by name or any other particular, such as social security number, shall be extracted from the case files and incorporated into any file or index system aside from or in addition to the information contained on the legal assistance form (NAVJAG 5801/9) or locally used equivalent. Strict adherence to the foregoing will ensure compliance with the Privacy Act. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

1909 REFERRALS TO CIVILIAN LAWYERS

a. *General.* If it is determined that the legal assistance requested is beyond the scope of this Chapter, or if no available legal assistance officer is qualified to give the assistance requested, the client should be referred to a civilian lawyer. When the client does not know of a lawyer whom he wishes to represent him, his case may be referred to an appropriate bar organization, lawyer referral service, legal aid society, or other local organization for assistance in obtaining reliable, competent and sympathetic counsel, or to a civilian lawyer designated by such organization.

b. *Fees charged by civilian lawyers.* Legal assistance clients being referred to a civilian lawyer should be advised that, even when the fee to be charged is set by statute or subject to court approval, it should be one of the first items discussed to avoid later misunderstandings and eliminate uncertainty. Legal assistance officers should exercise caution in discussing possible fees to be charged by civilian lawyers so as to avoid embarrassment or misunderstanding between the client and his civilian lawyer.

1910 FEES, COMPENSATION, SOLICATION, AND REPRESENTATION IN CIVILIAN COURTS

a. *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this Chapter whether or not the service rendered is normally provided or available to such person under this Chapter and whether or not the service is rendered during duty hours as a part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this Chapter with respect to matters about which they consulted or advised said person in an official capacity. The prohibition may be waived only by the Judge Advocate General of the Navy or the Director, Naval Legal Service, as appropriate, in extraordinary circumstances on a case by case basis for inactive duty Reserve judge advocates who consulted with or advised an eligible client in an official capacity. Before a waiver may be granted, the following criteria, as well as other relevant criteria, shall be considered: (1) whether the waiver is specifically requested by the party concerned or an appropriate representative, (2) whether there is a likelihood that undue and substantial prejudice will otherwise be suffered by the party concerned, (3) whether adequate continued representation for compensation is otherwise reasonably available, and (4) whether the requested representation will violate the Code of Professional Responsibility of the American Bar Association or other applicable legal or ethical requirements.

b. *Solicitation.* Active duty military personnel, civilian employees of the Navy and Marine Corps, and inactive reservists, acting in an official capacity, are prohibited from soliciting, or advising that any person entitled to legal assistance under this Chapter retain, consult, or seek legal services from themselves in their private capacities, or from any attorney who is a partner or associate of a law firm of which they are partners or associates, or from any attorney with whom they share office spaces; *provided* that nothing herein shall prevent such person from being referred to civilian counsel as provided in section 1909 of this Chapter.

c. *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in section 1906a(3) and appendix A-19-2(1), before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, or the Director, Naval Legal Service, as appropriate. Requests for such permission may be in the form prescribed in section 1360b.

1911 SUPERVISION

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, officers in charge of naval legal service offices and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall ensure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the

American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

1912 COMMUNICATIONS

a. Legal assistance officers are authorized to communicate directly with the Judge Advocate General, with each other, and with other appropriate organizations and persons concerning legal assistance matters.

b. The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in DOD Instruction 5330.2 of 12 July 1968. A sample of the letter-head to be used is:

Legal Assistance Office
Building 200, Washington Navy Yard
Washington, DC 20374

Tel: (202) 433-4331

Naval legal service offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply U.S. Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in section 1908 of this manual.

1913 REPORTS

Effective 1 January 1979 each legal assistance office shall, by the 10th day of October of each year, prepare and submit to the Judge Advocate General (Code 63) one copy of the Legal Assistance Report (NAVJAG 5801/3 (Rev. 12-78)) covering the preceding fiscal year. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in paragraph 1911. Reports symbol JAG 5801-1 is assigned for this reporting requirement.

1914 FILES AND RECORDS

a. *Case files.* The material contained in legal assistance case files is necessarily limited to private unofficial matters and such material is privileged and protected under the attorney-client relationship. Each legal assistance office should therefore maintain only such files as are necessary for the proper operation of the office.

b. *Office records.* Each legal assistance office should maintain whatever records are necessary for the preparation of required reports. The Legal Assistance Case Record (NAVJAG 5801/9 (Rev. 5-71)) provides for the recording of the information required for the annual report, and the use of this form to record each individual legal assistance case is recommended.

1915 LIBERAL CONSTRUCTION OF CHAPTER

The provisions of this Chapter are intended to be liberally construed to aid in accomplishing the mission of legal assistance.

Chapter XX

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PART A–GENERAL PROVISIONS FOR CLAIMS

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a. The Judge Advocate General is responsible for administration and supervision, worldwide, of claims arising under the Federal Tort Claims Act (Part B of this chapter), the Military Claims Act (Part C of this chapter), the Nonscope Claims Act (Part D of this chapter), the Personnel Claims Act (Chapter XXI), the Foreign Claims Act (Chapter XXII), the Act of 7 September 1962 (section 2227 of this manual), the Medical Care Recovery Act (Part A of Chapter XXIV), and the Federal Claims Collection Act of 1966 (Part B of Chapter XXIV).

b. Part A delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this chapter. Where the general provisions of Part A conflict with the specific provisions of any subsequent part of this chapter, the specific provisions govern.

2002 INVESTIGATION: IN GENERAL

Every incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to ensure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of claims against and in favor of the Government and for all other official action required by the circumstances of the case. Claims against persons in the naval service arising from the performance of official duties shall be investigated and processed as claims against the United States.

2003 INVESTIGATION: REQUIREMENTS

a. *When required.* Investigations are required whenever a claim against the Navy is filed or is likely to be filed, or when a claim in favor of the Navy is possible. The Navy must have the background information and data to process all claims and to defend all suits which are commenced before the running of the statute of limitations. Accordingly, even when recovery may be barred by statute or decisional law, all deaths, serious injuries, and substantial losses to or destruction of property must be investigated promptly while the evidence is available. When a claim may be barred, as by one of the exclusions enumerated in sections 2036c, d, 2055d, or 2065b, the investigative report must document the factual basis for the exclusion.

b. *Immediate reports.* An immediate letter report shall be made to the Judge Advocate General, with copies to the Director, Torts Branch, Civil Division, Department of Justice, Washington, D.C. 20530, and the appropriate reviewing authority listed in section 2080 in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims;

(2) Upon filing of a claim which could develop litigation which would involve a new precedent or point of law (see section 2053c(2));

(3) Claims or possible claims which involve or are likely to involve another agency besides the Department of the Navy.

c. *Investigation without delay.* Incidents falling within any of the categories listed in subsection a of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

d. *Opening claim file and disclosure of personal information.* When an investigation is commenced or a claim is filed, whichever occurs first, a claim file should be opened by the naval activity most directly involved. Because this file will probably contain personal information solicited from the claimant or witnesses, all such files must bear a cover-sheet for recording and accounting for disclosures of information from the file about identifiable individuals. Appendix A-3-a is a suggested format for this purpose. Disclosure of personal information from the claim file is governed by the Privacy Act of 1974 (5 U.S.C. § 552a) and SECNAVINST 5211.5 series. It is important to note that unauthorized disclosure of such information could subject the discloser to criminal penalties.

e. *Additional requirements under other regulations.* This chapter in no way modifies the requirements of U.S. Navy Regulations, the Manual for

Courts-Martial, or other provisions of the Manual of the Judge Advocate General, and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of this Manual. Report Control Symbol JAG 5890-12 is assigned to this report.

2004 INVESTIGATION: RESPONSIBILITY FOR

a. *Immediate responsibility.* Responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of the personnel involved or of the activity in which the incident occurred. Where two or more activities are involved, see section 0207. If a nonnaval activity is concerned, see section 2003b(3). Such nonnaval activity should be promptly notified of the incident.

b. *Assistance.* When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter should comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating installation or unit.

c. *Report of Motor Vehicle Accident, Standard Form 91.* RCS OPNAV 5100-6. The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form 91. This driver's report shall be made even though the driver of the other vehicle, or any other person involved, states that no claim will be filed, and even though the only vehicles involved are Government owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

2005 THE INVESTIGATING OFFICER: IN GENERAL

Every investigation required by these regulations shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and with experience in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all and the same powers as the investigating officer, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To ensure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an individual in his capacity as an investigating officer shall ordinarily have priority over any other assignments he may have.

2006 THE INVESTIGATING OFFICER: DUTIES

It shall be the duty of the investigating officer, in making an investigation pursuant to these regulations:

a. To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

b. To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.

c. To secure and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests. To ensure compliance with the Privacy Act of 1974 (5 U.S.C. § 552a) with regard to interviewing witnesses, see section 0308 and Appendix A-3-a.

d. To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason therefor.

e. To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For the proper method of computing the amount of damages, see section 2014.

(1) *Loss of earnings.* Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public or, where the claimant is in business for himself, a certified copy of company records showing claimant's age, occupation, wage or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained.

(2) *Medical information to be supplied by claimant.* Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a written statement by the attending physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

f. To obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident in all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability.

g. To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed.

(1) *Medical examination at a military installation.* The investigating officer, if the injured person does not object, should have a physical examination of the injured person conducted at a military installation. Consideration should be given to the availability of personnel and facilities of the installation. Expenses for services or supplies from other Federal agencies or civilian agencies should not be incurred. A copy of the report of the physical examination obtained from the medical installation shall be included in the report of investigation or, if made subsequent to the forwarding of that report, forwarded to the same addressee as the report of investigation.

(2) *Navy expert opinion.* In appropriate cases, a Navy-employed expert may be asked to evaluate the extent of damage. Anyone possessing special knowledge or experience, such as a public-works estimator, may qualify. Any costs involved in obtaining the expert opinion shall be absorbed by the command to which the expert is attached.

(3) *Government experts from other than Navy sources.* On occasion, expert opinion is available from other departments and agencies of the Government. Arrangements for this service, when available, may be made locally. Any expense involved will be absorbed by the command conducting the investigation.

(4) *Civilian experts.* Occasionally, such as when accurate real-estate appraisals cannot be obtained from public-works or Federal Housing Administration personnel, civilian experts must be employed in order to protect the Government's interest. Whenever a Navy-funded civilian expert is considered necessary, the cost will be absorbed by the command conducting the investigation. Medical experts may be

employed only with the permission of the Chief, Bureau of Medicine and Surgery, and a request for such permission will normally be made only after a physical examination has been conducted in accordance with paragraph (1) above.

h. To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception for claims under $600 as set forth in section 2007b.

i. To furnish the proper claim forms to any person who inquires concerning the procedure for making a claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim, or, if a claim has been filed, to see that the information required by section 2013 has been submitted by the claimant.

j. To submit the complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit. In a case where not all of the information required by section 2007 is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report containing all available information shall be submitted promptly. It shall then be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

2007 THE INVESTIGATIVE REPORT: CONTENTS

A written report of investigation will be made in each case using standard forms whenever appropriate.

a. *Pertinent data.* Except in cases falling within the provisions of subsection b of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.

(4) A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part-owners, and the basis of the claimant's alleged right to file a claim.

(5) Names, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses. Regardless of whether an individual is a naval member or employee, he should not be requested to provide his social security number in connection with the investigation. This will obviate the need for giving the individual a social security number statement under the Privacy Act (5 U.S.C. § 552a). If necessary in a particular investigation, the number can generally be obtained from other available records.

(6) Names and addresses of witnesses.

(7) The Privacy Act statement for each party or witness who was asked to furnish personal information about himself after 26 September 1975. Noncompliance with this requirement should be explained in the preliminary statement to the investigative report and, when required, remedied in accordance with section 0308.

(8) A recommendation as to whether or not military personnel and civilian employees involved were acting in the line of duty, or scope of their employment, as defined in section 2031b. The report shall contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.

(9) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(10) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(11) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, address, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(12) If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(13) A statement as to whether any person involved violated any state or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(14) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(15) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(16) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractural agreement to indemnify the Government.

(17) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under section 2006 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure. Report control Symbol JAG 5890-4 is assigned to this report.

b. *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by section 2006 and the detailed report described in subsection a above, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Part B of this chapter) or the Military Claims Act (Part C of this chapter); and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in Appendix A-20-c. Report Control Symbol JAG 5890-14 is assigned to this report.

2008 THE INVESTIGATIVE REPORT: ACTION BY THE COMMANDING OFFICER OR OFFICER IN CHARGE

a. *Action.* If a claim is likely to arise, the investigative report shall be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if practicable, in endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in subsection 2007b is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing that report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request.

b. *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention: Commanding Officer of the appropriate Naval legal service office, or the cognizant staff judge advocate." When there is doubt as to the appropriate adjudicating authority, the reports may be forwarded through the proper chain of command to the Judge Advocate General.

2009 THE INVESTIGATIVE REPORT: ACTION BY REVIEWING AUTHORITY

a. *Return or endorsement.* A reviewing authority may return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, it shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

b. *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. § 552a) and SECNAVINST 5211.5 series. Any indication of noncompliance shall be explained either in the preliminary statement or the forwarding endorsements and, when required, remedied in accordance with section 0308. The appropriate officer listed in Appendix A-20-f has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior to forwarding the report to the Judge Advocate General.

c. *When a claim has been filed.* If a claim has been filed, see section 2016. When a claim is received, all holders of the investigative report shall be notified.

2010 CLAIMS: IN GENERAL

a. *Claims against the United States.* Claims against the Government shall receive expeditious and just disposition throughout the entire course of processing. Sections 2011-2022 should generally be followed in such processing. All claims against the Government, to be deemed meritorious, must have a basis in a specific Congressional enactment. Accordingly, any claim should be viewed in light of that statute under which it might be considered, if at all, and the specific provisions of this manual concerning that statute should be consulted.

b. *Claims in favor of the United States.* See Chapter XXIV for the processing of claims in favor of the Government.

c. *Assistance to claimants.* Claimants or potential claimants who make inquiry concerning their rights or procedures to be followed in the filing of claims shall be referred to a Navy claims officer. It shall be an official duty of the claims officer to: (1) provide such persons with the proper claims forms, (2) advise where the claims forms should be submitted, (3) advise what, if any, substantiating evidence will be required to be filed with the claims forms, and (4) advise generally concerning the requirements of section 2013. A Federal official must be careful not to violate 18 U.S. C. §205, which makes it a crime for any officer or employee of the United States to act as an agent or attorney in the prosecution of any claim against the United States. See section 1907d concerning requests for legal assistance in connection with claims against the United States.

2011 CLAIMS: A PROPER CLAIMANT

a. *Damage to property cases.* A claim for damage to, or loss or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary or legal representative.

b. *Personal injury or death cases.* A claim on account of personal injury shall be presented by the

person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

c. *Subrogation.* A subrogor and a subrogee may file a claim jointly or may file separate claims. Except as provided in section 2040-14.6(a), when separate claims are filed and each claim, individually, is within local authority, they may be processed locally, when appropriate, even if the aggregate of such claims exceeds the monetary jurisdiction of the approving or settlement authority. When one claim cannot be settled, the provisions of section 2016c-d apply. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

d. *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 USC §203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

2012 CLAIMS: PRESENTMENT OF

a. *Standard Form 95.* A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim, in a sum certain, and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95, (see Appendix A-20-a) shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signatures of the claimant or his agent shall be identical throughout. When more than one person has a claim arising from a single incident, each person should file his claim separately and individually. A subrogor and a subrogee may file a claim jointly or separately. Only one claim, combining damage to property and personal injury or death, may be submitted by a claimant.

b. *To whom submitted.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, 200 Stovall St., Alexandria, Virginia 22332. *See* section 2040-14.2.

2013 CLAIMS: CONTENTS OF

a. *Information to be submitted.* The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant;

(2) The amount claimed for property damage, loss, or destruction, and the amount claimed on account of personal injury or death;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The persons, vehicles, and other property involved;

(5) The identity of the Government department, agency, or activity involved;

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it;

(7) The nature and extent of the resulting damage, loss, destruction, or injury;

(8) The names and addresses of any witnesses to the incident; and

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

b. *Privacy Act advice.* When any person making a claim for damage or injury is requested by a person acting on the Government's behalf to supply personal information which will be made a part of the claim file, the person making the request shall first provide the individual a Privacy Act statement in duplicate containing the particular advice prescribed in SECNAVINST 5211.5 series, in accordance with section 0308. The Standard Form 95 which was issued in 1978 contains a Privacy Act Statement (*See* Appendix A-20-a(1)). Otherwise, the original is to be signed by the claimant and made a part of the claim file, and the copy should be retained by the claimant. If the information from the claimant is requested orally, the Privacy Act statement should be orally summarized and explained as necessary to ensure that the claimant fully understands it.

c. *Amount of the claim.* The amount of the claim shall be stated in a sum certain and shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid, or, in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit: a written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. In support of claims for lost earnings, the additional information delineated in section 2006e(1) shall be submitted. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred. The claimant may also be required to provide additional information including: his date and place of birth; the names and ages of parents and grandparents, and, if any be dead, the age at and cause of death; the names and ages of brothers and sisters, serious illnesses suffered by any of them, and, if any be dead, the age at and cause of death; the date and place of all marriages, and the names and ages of all children; the dates of, places at and reasons for hospitalization or physician's care in the preceding 10 years, as well as the names and addresses of all hospitals and attending physicians; the extent of use of alcohol and tobacco products; musical or artistic skills, remarkable mechanical skills, recreational activities, and membership in social and religious organizations; the names and addresses of all employers in the preceding 10 years and the nature of the work performed for each; and the value of any interest in real estate, jewelry, stocks and bonds, savings and checking accounts, vehicles, boats, furniture, life insurance policies, annuities and other investments. The claimant may be required to provide copies of Federal, state, and local tax returns for the preceding 10 years and in a wrongful death case copies of the will, estate tax return, inventory, and preliminary or final accounting.

d. *Brief.* The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

2014 CLAIMS: THE SCOPE OF LIABILITY AND THE MEASURE OF DAMAGES

No claim can be paid unless a determination is made that the facts alleged and the conduct complained of by the claimant are facts and conduct for which the Government has agreed to stand responsible in money damages under a particular claims statute. Accordingly, the specific provisions of the subsequent parts of this chapter regarding "Scope of Liability" should be considered (see sections 2036, 2055, and 2065). Similarly, the specific provisions of this chapter concerning "Measure of Damages" should be utilized in valuing the quantum of liability (see sections 2037, 2056, and 2065).

2015 CLAIMS: ACTION BY RECEIVING OFFICER OR COMMAND

a. *Record date of receipt.* The first command receiving the claim shall stamp or mark the date of receipt upon the letter of claim or claim form.

b. *Determine military activity involved.* The receiving command should determine the local naval activity most directly concerned, normally the commanding officer or the officer in charge of the personnel involved or of the activity in which the incident occurred. If a nonnaval activity is or may be the activity most directly involved, see section 2003b(3) and subsection d of this section.

c. *When the receiving command is the activity most directly involved.* An immediate investigation in accordance with sections 2002-2007 should be commenced. If an investigation has already been completed, an evaluation of such investigation in light of the claim should be conducted with a view to correcting or supplementing the investigation. In addition, the receiving command shall notify all holders of the investigation that a claim has been filed. The original claim and the investigation or any reevaluation thereof should then be forwarded as directed by section 2008.

d. *When the receiving command is not the activity most directly involved.* If an activity other than the receiving command is the activity most directly involved, the original claim should be forwarded to that activity.

2016 CLAIMS: ACTION BY ADJUDICATING AUTHORITY

a. *Review prior action.* The adjudicating authority is ultimately responsible for determining that an adequate and complete investigation in accordance with sections 2002-2007 has been conducted, that the date of initial receipt of the claim is recorded on the face of the claim, and that all holders of the investigation, if completed, have been notified of the claim.

b. *Determine sufficiency of claim.* A determination of the sufficiency of a claim under sections 2011-12 should be made. If the claim is deemed insufficient, it should be returned to the submitting party together with an explanation of the insufficiency. Such action by the adjudicating authority does not constitute denial of the claim.

c. *Adjudication of claims.*

(1) *Claims within the adjudicating authority.* Except as provided in section 2035c concerning multiple claims, the appropriate adjudicating authority shall approve or disapprove the claims within his adjudicating authority as described in section 2080. In unusual cases, the entire record, together with the information required by subsection d of this section, may be referred to the Judge Advocate General for appropriate action.

(2) *Claims in excess of the adjudicating authority.* All claims, regardless of the amount involved, should be negotiated for settlement within local adjudicating authority if such settlement is appropriate and possible. Permission of higher command is not necessary. Negotiation beyond local adjudicating authority may be attempted, if appropriate, provided claimant is clearly informed that the final decision on his claim will be made by a higher command.

d. *Forwarding a claim to the Judge Advocate General.* In the event a claim cannot be approved, settled, compromised, or denied within the adjudicating authority granted by this chapter, such claim should be forwarded promptly to the Judge Advocate General with the following materials:

(1) An official endorsement or letter of transmittal;

(2) A memorandum of law containing an analysis of the facts, a review of the applicable law, an evaluation of liability, and a recommendation as to the settlement value of the claim;

(3) The original of the investigative report together with all enclosures and allied papers; and

(4) The original claim and all copies thereof filed by the claimant. The adjudicating authority shall retain at least one copy of all materials transmitted to the Judge Advocate General under this subsection.

e. *Litigation reports*

(1) A litigation report is a letter addressed to the Department of Justice or the U.S. Attorney, as appropriate, containing a narrative summary of the pertinent facts upon which the lawsuit is based. Al-

though most litigation reports originate from the Claims Division of the Office of the Judge Advocate General, the Judge Advocate General will normally request that the cognizant commanding officer, naval legal service office, or staff judge advocate provide a litigation report when suit is filed by a claimant and the claim has not yet been forwarded to the Judge Advocate General by the adjudicating authority in accordance with section 2016d and in other cases when considered appropriate. The litigation report should be sent directly to the cognizant United States Attorney unless otherwise directed, with copies of the report and all enclosures forwarded to the Department of Justice and the Judge Advocate General.

(2) Section 1331b.(1) provides that requests for release of JAG Manual Investigations, including enclosures, outside of the Department of the Navy, shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination. The only exception to this rule is in the case of affirmative claims files. See section 1331 for further information.

2017 CLAIMS: PAYMENT OF

Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. See section 2040-14.10(a) regarding the payment of Federal tort claims in excess of $2,500 by the General Accounting Office and Appendix page 20-d.

2018 CLAIMS: SETTLEMENT AGREEMENT AND RELEASE

a. *Difference between fully and partially approved claims.* In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury (Standard Form 95), is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated *in writing* his willingness to accept such amount in full satisfaction and final settlement of the claim. Sample settlement agreement are contained in A-20-b(1) and A-20-b(2).

b. *Release.* Except for an advance payment pursuant to section 2071, the acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees pursuant to the authority granted by statute and these regulations, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant. Acceptance constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, or the civil action provisions of 28 USC 1346(b) and Part B of this chapter also constitutes a complete release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

2019 CLAIMS: DISPOSITION OR DENIAL OF

a. *Claimant to be notified.* In every case the approving or disapproving authority shall notify, promptly and in writing, the claimant of the action taken on his claim.

b. *Final Denial.* A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail with return receipt requested. The notification of denial may include a statement of the reason or reasons for denial. Such notification shall include a statement that if the claimant is dissatisfied with the action taken on his claim he may:

(1) If the claim is cognizable under the Federal Tort Claims Act, within 6 months of the date of such notification, file suit in the appropriate United States District Court.

(2) If the claim is cognizable under the Military Claims Act, within 30 days after receipt of such notification, appeal to the Secretary of the Navy stating the grounds relied upon for such appeal. The notice of denial shall inform the claimant that suit or appeal pursuant to one statute will not toll the time limitation set forth above for the other.

2020 CLAIMS: AMENDMENT, APPEAL, OR RECONSIDERATION OF

a. *Amendment.* At any time prior to denial, or prior to action by the claimant exercising his option to deem a claim denied, a claim submitted pursuant to the Federal Tort Claims Act may be amended. See sections 2034e and 2040-14.2(b).

b. *Appeal or reconsideration.*

(1) In connection with the denial of any claim within the scope of the Federal Tort Claims Act (Part B of this chapter), the claimant may, in writing and provided such writing is received by the authority who denied the claim not later than 6 months after the date of denial, appeal or request reconsideration of his claim. See sections 2034i and 2040-14.9(b). Such appeal or request must state the reasons therefor. An appeal or request filed solely to extend the statutory period for filing suit shall be void.

(2) In connection with the denial of any claim within the scope of the Military Claims Act (Part C of this chapter), or not cognizable under any other provision of law (Part D of this chapter), the claimant may, in writing and provided such writing is received by the proper authority under section 2053h or 2053c not later than 30 days after the date of denial, appeal or request reconsideration of his claim. Such appeal or request shall state the reasons therefor.

c. *Disposition of appeal or reconsideration.* Upon receipt of a written appeal or request for reconsideration, such appeal or request shall be promptly considered by the appropriate adjudicating authority. Final disposition shall be in writing as prescribed by section 2019.

2021 CLAIMS: ACTION REQUIRED UPON NOTICE OF SUIT

a. *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of 28 USC 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commanding officer of the appropriate naval legal service office who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or omission committed within the scope of his employment which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner. See sections 2002 and 1320c.

b. *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 USC 1346(b), a request shall be made to the commanding officer of the appropriate naval legal service office for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed.

c. *Adjudicating authority.* A request for an investigative report shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed. In addition, the commanding officer of the appropriate naval legal service office shall determine if an administrative claim has been filed, and, if records show no claim to have been received, the Judge Advocate General, the Department of Justice, and the United States Attorney shall be promptly notified of this fact.

d. *Litigation reports.* See section 2016e.

2022 CLAIMS: FINALITY

Subject to the provisions of 28 U.S.C. §1346(b) and section 2034i respecting civil action against the United States and administrative reconsideration of Federal Tort Claims Act denials, and subject to the provisions of section 2053h regarding appeal of Military Claims Act denials, any award or determination by the Secretary of the Navy or his designees is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy, or by his designees, under the authority of the Military Claims Act is final and conclusive for all purposes.

2023 DISCLOSURE OF INFORMATION

Release of information from official naval records, including *JAG Manual* and claims investigations and claims files shall be governed by SECNAVINST 5211.5 series and SECNAVINST 5720.42 series, respectively. To determine which instruction governs a particular demand or request for information, see section 1331. It is noted that, when requests for copies of *JAG Manual* Investigations are processed under SECNAVINST 5720.42 series, endorsements, findings of fact, opinions, recommendations, and other intra- and inter-agency advisory communications which become part of these investigations frequently may be withheld from public disclosure as exempt under exemption 5 of the Freedom of Information Act [5 U.S.C. §552(b)(5)] when the withholding will serve a significant and legitimate governmental purpose. Similarly, the release of portions of information from personnel and medical records and similar files may be determined, in some cases, to constitute a clearly unwarranted invasion of personal privacy, thus justifying the withholding of that information under exemption 6 of the Freedom of Information Act [5 U.S.C. §552(b)(6)]. The fact that particular information could provide the basis of a claim against the United States, or the fact that particular information would invade an individual's privacy in an unwarranted manner, might constitute a significant and legitimate governmental purpose for invoking a statutory exemption, if available, to deny a request for release under the Freedom of Information Act. For recording disclosures of information from "systems of records" as defined by the Privacy Act (5 U.S.C. §552a), see section 0308 and Appendix A-3-b(1). For a broader statement concerning the production of information from official naval records, whether in response to a court order or in the absence of a court order, see part C of chapter XIII.

2024 SINGLE-SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS

a. *Applicable law.* Department of Defense Directive 5515.8 series (NOTAL) has assigned single-service responsibility for the processing of claims under the following laws:

(1) Foreign Claims Act [10 U.S.C. §2734 (*see* chapter XXII of this Manual)];

(2) Military Claims Act [10 U.S.C. §2733 (*see* Part C of this chapter)];

(3) Act of 7 September 1962 (10 U.S.C. §§2734a and 2734b), pro-rata cost sharing of claims pursuant to international agreement (*see* section 2227 of this Manual);

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements (*see* sections 2073 and 2227 of this Manual);

(5) Act of 25 September 1962 (42 U.S.C. §§2651-2653) claims for reimbursement for medical care furnished by the United States (*see* chapter XXIV of this Manual);

(6) Act of 9 October 1962 (10 U.S.C. §2737), claims not cognizable under any other provisions of law (*see* Part D of this chapter);

(7) The Federal Claims Collection Act of 1966 (31 U.S.C. §§951-953); the Act of June 1921 (31 U.S.C. §71), claims and demands by the Government of the United States; and

(8) Act of 8 September 1961 (10 U.S.C. §2736), advance or emergency payments (*see* Part E of this chapter).

b. *List of countries.* Responsibility for the processing of all claims in favor of the United States cognizable under a(4), (5), or (7) above, or against the United States cognizable under a(1) through (4), (6), or (8) above, which arise in the following countries is assigned to the military departments listed below:

(1) Department of the Army: Belgium, France, the Federal Republic of Germany, Iran, Korea, Liberia, Mali, Senegal, Republic of Zaire, and as the Receiving State Office in the United States under a(3) and (4).

(2) Department of the Navy: Ethiopia, Iceland, Italy, and Portugal.

(3) Department of the Air Force: Australia, Canada, Denmark, Egypt, Greece, Greenland, India, Japan, Nepal, Luxembourg, Netherlands, Norway, Oman, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

c. *U.S. forces afloat cases under $500.* Notwithstanding the provisions of subsection b above, the Department of the Navy is authorized to settle claims under $500 caused by Navy personnel not acting within scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreements described in a(4) above concerning the processing of nonscope of duty claims by receiving and sending state authorities.

d. *Assignment of responsibility of a unified command.* On an interim basis and while awaiting confirmation and approval from the Office of the Secretary of Defense, a Unified Command may, when necessary to implement contingency plans, assign single-service responsibility for the processing of claims in countries where such assignment has not already been made.

2025-
2029 RESERVED

PART B—FEDERAL TORT CLAIMS ACT

2030 SCOPE OF PART B

The regulations of Part B apply exclusively to the administrative processing and consideration of claims against the United States arising under the Federal Tort Claims Act (28 U.S.C. §§1346(b), 2671-2680). The regulations of the Attorney General of the United States concerning administrative claims under the Federal Tort Claims Act (28 CFR Part 14) are presented in section 2040 of this chapter and are expressly incorporated into the regulations of the Judge Advocate General. In cases of conflict between provisions of sections 2030-2039 and the provisions of section 2040, the provisions of section 2040 prevail for Federal Tort Claims Act claims.

2031 DEFINITIONS

a. *Employees of the Government.* The term "employee of the Government," as used in this chapter, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, with or without compensation. Contractors with the United States are not Federal agencies, and their employees are not "employees of the Government," even if the contractor is operating a Government-owned plant. Status as an "employee of the Government" is a Federal question to be determined by Federal law.

b. *Scope of employment and line of duty.* "Acting in the scope of employment" and "acting in the line of duty" are synonymous for purposes of the Federal Tort Claims Act, and the meaning is determined in accordance with principles of respondeat superior under the state law of the jurisdiction in which the act or omission occurred.

2032 STATUTORY AUTHORITY

a. *Waiver of sovereign immunity.* Subject to the provisions of 28 U.S.C. §§2671-80 Federal Tort Claims Act Procedure, the United States district courts including the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, have exclusive jurisdiction of civil actions on claims against the United States for money damages for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred [28 U.S.C. §1346(b)].

b. *Setoff, etc., encompassed.* The jurisdiction described in subsection a includes jurisdiction of any setoff, counterclaim, or other claim or demand on the part of the United States [28 U.S.C. § 1346(c)].

c. *Venue.* Any civil action on a tort claim against the United States under 28 U.S.C. § 1346(b) may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred (28 USC §1402(b)).

d. *Jury trial.* Any action against the United States under 28 USC §1346(b) shall be tried without a jury (28 USC §2402).

e. *Exclusive character of remedies.*

(1) *Action against the United States.* The remedies provided by 28 USC §1346(b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 USC §1346(b); 28 USC §2679(a)).

(2) *Action against the individual employee.* In most cases, the employee of the Government whose conduct gives rise to a civil action against the United States under 28 USC §1346(b) is immune from suit brought against him personally. In cases not covered by the Federal Driver's Act (28 USC §2679(b)), the immunity arises from case law (*Barr v. Matteo*, 360 U.S. 564 (1959); *Bates v. Carlow*, 430 F.2d 1331 (10th Cir. 1970)), and the immunity must be pleaded and proved (*Willingham v. Morgan*, 424 F.2d 200 (10th Cir. 1970)). Since it is possible, notwithstanding the statute and cases cited above, that a Government employee may be held personally liable for damages caused by his negligent performance of official duties, and he may be responsible for paying a judgment where the United States is not named as codefendant, the Government employee should be advised to seek appropriate legal advice in each case. *See* section 1320c.

2033 ADMINISTRATIVE CLAIM AND CONSIDERATION AS A PREREQUISITE TO SUIT

a. No action may be maintained against the United States under 28 USC §1346(b) unless the claimant has first properly filed an administrative claim and that claim has been finally denied. See sections 2034b and 2034h for what constitutes a proper filing and a final denial of a claim. The failure of the Navy to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim, or counterclaim (28 USC §2675(a)).

b. No action may be instituted for an amount in excess of the amount of the administrative claim unless the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of the filing of the claim, or upon allegation and proof of intervening facts relating to the amount of the claim (28 USC §2675(b)). See section 2034(e) regarding the amendment of an administrative claim.

2034 THE ADMINISTRATIVE CLAIM

a. *Proper claimant*

(1) *Property.* A claim for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative.

(2) *Personal injury.* A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) *Death.* A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally entitled to do so in accordance with local law governing the rights of survivors.

(4) *Loss compensated by insurer.* A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer

with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(5) *Claim presented by agent or legal representative.* A claim presented by an agent or legal representative will be presented in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

b. *Proper claim and presentation.* A claim shall be deemed to have been presented when the Navy receives from a claimant an executed Standard Form 95 or written notification of an incident, together with a claim for money damages in a sum certain. See Appendix A-20-a for a sample form. A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency. For purposes of the 6-months provision of section 2033a above, a claim shall be deemed to have been filed when it is received by the appropriate Federal agency. See section 2033b(3) for the reporting of claims within the purview of both the Navy and another Federal agency.

c. *Evidence and information in support of the claim.* The claimant may be required to furnish any evidence which may have a bearing on either the responsibility of the United States for the death, personal injury, or injury to or loss of property, or the damages claimed (28 CFR 14.4). See sections 2013 and 2040-14.4 for the specific evidence and information that may be required. Failure of the claimant to provide the required information upon request may result in no administrative consideration of the claim.

d. *Investigation and examination.* The claim shall be investigated in accordance with Part A. The Navy may request, or be requested by, any other Federal agency to investigate a claim filed under 28 USC §2672 or to conduct a physical examination of a claimant and to provide a report of the physical examination. See section 2040-14.8.

e. *Amendment of the claim.* A proper claim under subsection b of this section may be amended by the claimant at any time prior to a final disposition of the unamended claim by the Navy or prior to the exercise of the claimant's option under section 2033a and 28 USC §2675(a). An amendment shall be submitted in writing and shall be signed by the claimant or his duly authorized agent or legal representative. A proper amendment to a pending claim gives the Navy 6 months from the date of receipt of such an amendment to make a final disposition of the amended claim, and the claimant's option under section 2033a and 28 USC §2675(a) shall not accrue until 6 months after the filing of the amendment. Notwithstanding the above, no finally-denied claim for which reconsideration has been requested under subsection i may be amended.

f. *Payment of the claim.* Any award, compromise, or settlement in an amount of $2,500 or less shall be paid in accordance with section 2017. Payments in excess of $2,500 shall be paid in accordance with section 2040-14.10. The officer signing Standard Form 1145 as an authorized designee must include a statement over his signature citing his JAG Manual authority to sign. See Appendix A-20-d.

g. *Settlement agreement.* Sample settlement agreements including the required statement concerning fee limitations in Federal Tort Claims Act cases are contained in Appendices A-20-b(1) and A-20-b(2).

h. *Denial of the claim.* Final denial of an administrative claim shall be accomplished in accordance with sections 2019 and 2040-14.9(a).

i. *Reconsideration of the claim under the Federal Tort Claims Act.* Prior to the commencement of suit and prior to the expiration of the 6-month period after a final denial of a claim by the Navy, the claimant or his duly authorized agent or legal representative may file a written request with the Navy for reconsideration of the finally-denied Federal Tort Claims Act claim. The Navy shall have 6 months from the date of the filing of a proper request for reconsideration in which to make a final disposition of the request, and such final disposition shall be accomplished in accordance with section 2020c. Claimant's option under 2033a and 28 USC §2675(a) shall not accrue until 6 months after the filing of the request. A final denial of a request for reconsideration is not a final denial of a claim for purposes of the first sentence of this subsection, but is a final denial for purposes of sections 2033, 2034h, and 2038. Nothing in this subsection shall be construed to permit amendment of a finally-denied claim. A request for reconsideration filed solely for the purpose of extending the section 2038b statutory period for filing suit shall be void.

2035 ADMINISTRATIVE CONSIDERATION: WHO IS AUTHORIZED?

a. *Statutory authorization.* Pursuant to 28 USC §2672 of the Federal Tort Claims Act and in accordance with regulations issued by the Attorney General (see section 2040), the Secretary of the Navy or his designee, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for damages to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. See subsection c for limitations on the authority of the Secretary or his designee.

b. *Specific delegation and designation.* See section 2080.

c. *Limitations on authority.* Notwithstanding the provisions of subsections a and b:

(1) Any award, compromise, or settlement by the Navy under 28 USC §2672 in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee;

(2) An administrative claim presented under 28 USC §2672 may be approved, disapproved, compromised, or settled only after consultation with the Department of Justice by the Judge Advocate General when:

(a) A new precedent or a new point of law is involved;

(b) A question of policy is or may be involved;

(c) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third-party claim; or

(d) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of a related claim in which the amount to be paid may exceed $25,000; and

(3) An administrative claim presented under 28 USC §2672 may be adjusted, determined, approved or disapproved, compromised, or settled by the Judge Advocate General only after consultation with the Department of Justice when the United States or its employee agent or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(4) In all situations noted in paragraphs (2) and (3) of this subsection in which the approval, disapproval, compromise, or settlement of a claim would otherwise be within the authority of the person handling it, the claim, along with the entire file, shall be forwarded to the Judge Advocate General with a full statement of the reasons therefor. Such forwarding shall be in accordance with section 2016d.

2036 SCOPE OF LIABILITY

a. *In general.* Subject to the exceptions listed in subsections c and d, in adjudicating claims under section 2035, the liability of the United States is generally determined in accordance with the law of the place where the act or omission occurred (28 USC §2672). Where local law and applicable Federal law conflict, the latter prevails.

b. *Multistate torts.* In situations involving more than one jurisdiction, the liability of the United States under subsection a is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (*Richards v. United States*, 369 U.S. 1 (1962)).

c. *Claims not within the Act.* By virtue of 28 USC §2680, the provisions of the Federal Tort Claims Act do not apply to:

(1) Any claim based upon an act or omission of an employee of the Government exercising due care in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the

failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused;

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter; but see section 2055c for processing mail claims under the Military Claims Act;

(3) Any claim arising with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) Any claim for which a remedy is provided by the act of 9 March 1920, as amended (46 USC §§741-52), or the act of 3 March 1925 as amended (46 USC §§781-90) relating to claims or suits in admiralty against the United States. Claims arising under the Death on the High Seas Act (46 USC §761) are not excepted from the provisions of 28 USC §1346(b). Because they may involve both admiralty and torts procedure, however, claims under this Act will be referred to the Judge Advocate General for adjudication in all cases. By virtue of 28 USC §2680(d), admiralty claims arising from damage caused by a vessel in the naval service are processed in accordance with Chapter XII. Admiralty claims arising from other sources may be adjudicated under the Military Claims Act or the Foreign Claims Act, with the assistance of the Admiralty Division of the Office of the Judge Advocate General if appropriate.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended (50 USC App. §§1-44);

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States;

(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; provided, that, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of the Federal Tort Claims Act shall apply to any claim arising, on or after March 16, 1974, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this provision, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(8) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system;

(9) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;

(10) Any claim arising in a foreign country (*see* chapter XXII concerning Foreign Claims); and

(11) Any claim arising from the activities of the Tennessee Valley Authority, the Panama Canal Company, a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

d. *Additional claims not payable.* Although not expressly excepted from the application of the provisions governing administrative settlement of Federal tort claims, the following types of claims shall not be paid:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred incident to service or duty (*Feres v. United States,* 340 U.S. 135 (1950); *compare Brooks v. United States,* 337 U.S. 49 (1949));

(2) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 31 USC §§240-43 and the applicable Personnel Claims Regulations (*see* chapter XXI);

(3) Any claim for the personal injury or death of a Government employee to whom the Federal Employees' Compensation Act, as amended and reenacted (5 USC §§7901-03, 8101-93), is applicable (*see* 5 USC §8116c, specifically);

(4) Any claim for personal injury or death of a civilian employee of a nonappropriated-fund activity covered by the Longshoremen's and Harbor Workers' Compensation Act (*see* 33 USC §905 and 5 USC §8171);

(5) That portion of any claim attributable to the fault or negligence of a contractor of the Government, to the extent to which such contractor may be liable under the provisions of his contract (*see United States v. Seckinger*, 397 U.S. 203 (1969) and section 2007a(15)); and

(6) Any claim against the Navy by another Federal agency. Tort or tort-type claims for damage to the property of one Government department or agency normally are not asserted against another Government department or agency, regardless of whether a department or agency is fully supported from appropriated funds, is partly supported by revenue producing activities, or is a Government corporation or a nonappropriated-fund activity (*see* 25 Comp. Gen. 49 (1945); 9 Comp. Gen. 263 (1930); 6 Comp. Gen. 171 (1926); 6 Comp. Dec. 74 (1899); *but see* 26 Comp. Gen. 235 (1946); 14 Comp. Gen. 256 (1934)). This interdepartmental waiver is predicated on the doctrine that property belonging to the Government is not owned by any department of the Government (*see* 22 Comp. Gen. 390 (1916)). The Government does not reimburse itself for the loss of its own property except where specifically provided for by law. A department or agency of the District of Columbia is not considered to be a Government department or agency for the purpose of filing a claim (*see* 46 Comp. Gen. 586 (1966); 36 Comp. Gen. 457 (1956)).

2037 MEASURE OF DAMAGES

a. *In general.* Subject to the exceptions set out in subsections b and d, for claims under the Federal Tort Claims Act, the measure of damages is determined by the law of the place where the act or omission occurred (28 USC §2674). When there is a conflict between local law and applicable Federal law, the latter governs.

b. *Multistate torts.* In situations involving more than one jurisdiction, the measure of damages of the United States under subsection a is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (*Richards v. United States*, 369 U.S. 1 (1962)).

c. *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for, in lieu thereof, actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought (28 USC §2674).

d. *Indemnity or contribution.* Under circumstances where the Government is deemed to be entitled to contribution or indemnity, the third party will be notified of the claim in writing and will be requested to contribute his fair share of a proposed settlement or to properly indemnify the Government. Contribution or indemnity claims will be processed and negotiated by the persons and commands listed in section 2080 when the recommended contribution of the Navy is within the settlement authority of such persons or commands. If the third party fails to make satisfactory arrangements, a valid claim may be denied in order to force the third party to be joined as a party defendant when the claimant brings suit. *See* section 2035c(2)(c) concerning settlement without indemnification or contribution.

e. *Setoff.* In a case brought by a serviceman not barred by the *Feres* doctrine (*Feres v. United States*, 340 U.S. 135 (1950)), an award will be reduced by the value of benefits received, and to be received in the future, by the serviceman (*Brooks v. United States*, 337 U.S. 49 (1949)).

2038 STATUTE OF LIMITATIONS

a. Every claim against the United States submitted for consideration under the Federal Tort Claims Act must be presented in writing within two years after the claim accrued or be forever barred (28 USC §2401(b)). The filing of suit against the United States does not constitute the presentment of a claim under this subsection or under 28 USC §2401(b) (*Gunstream v. United States*, 307 F.Supp. 366 (C.D. Cal. 1969)).

b. A tort claim is forever barred unless an action is commenced against the United States within 6 months after the date of mailing of notice of final denial of the claim by the agency to which it was presented (28 USC §2401(b)). *See* section 2034i regarding a request for reconsideration.

2039 ATTORNEY FEES

a. Attorney fees not in excess of 20 percent of any compromise or settlement made pursuant to sections 2034-2035 above may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. Where judgment is rendered in favor of the claimant by a court of competent jurisdiction or where settlement is made after suit is filed, attorney fees shall not exceed 25 percent (28 USC §2678).

b. The fee limitations noted above are imposed by statute, and in order to ensure compliance they shall be incorporated in any settlement agreement secured from a claimant. See Appendix A-20-b for a sample settlement agreement including a statement regarding attorney fees.

2040 REGULATIONS OF ATTORNEY GENERAL GOVERNING ADMINISTRATIVE CLAIMS PROCEDURE

The Regulations of the Attorney General for administrative claims under the Federal Tort Claims Act, promulgated under the authority of 28 USC §2672 and published at 28 CFR 14.1-14.11, are hereby incorporated into the Regulations of the Judge Advocate General and are quoted as follows:

TITLE 28–JUDICIAL
ADMINISTRATION

PART 14–ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.

14.1 SCOPE OF REGULATIONS

14.2 ADMINISTRATIVE CLAIM; WHEN PRESENTED

14.3 ADMINISTRATIVE CLAIM; WHO MAY FILE

14.4 ADMINISTRATIVE CLAIMS; EVIDENCE AND INFORMATION TO BE SUBMITTED

14.5 REVIEW BY LEGAL OFFICERS

14.6 LIMITATION ON AGENCY AUTHORITY

14.7 REFERRAL TO DEPARTMENT OF JUSTICE

14.8 INVESTIGATION AND EXAMINATION

14.9 FINAL DENIAL OF CLAIM

14.10 ACTION ON APPROVED CLAIMS

14.11 SUPPLEMENTING REGULATIONS

14.1 SCOPE OF REGULATIONS

These regulations shall apply only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967. The terms "Federal agency" and "agency" as used in this part include the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but do not include any contractor with the United States.

14.2 ADMINISTRATIVE CLAIM; WHEN PRESENTED

(a) For purposes of the provisions of section 2672 of Title 28, United States Code, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occured by reason of the incident.

(b)(1) A claim shall be presented to the Federal agency whose activities gave rise to the claim. When a claim is presented to any other Federal agency, that agency shall transfer it forthwith to the appropriate agency, if the proper agency can be identified from the claim, and advise the claimant of the transfer. If transfer is not feasible the claim shall be returned to the claimant. The fact of transfer shall not, in itself, preclude further transfer, return of the claim to the claimant or other appropriate disposition of the claim.

(2) When more than one Federal agency is or may be involved in the events giving rise to the claim,

an agency with which a claim is filed shall contact all other affected agencies in order to designate the single agency which will thereafter investigate and decide the merits of the claim. In the event that an agreed upon designation cannot be made by the affected agencies, the Department of Justice will be consulted and will thereafter designate an agency to investigate and decide the merits of the claim. Once a determination has been made, the primary agency shall notify the claimant that all future correspondence concerning the claim shall be directed to that Federal agency. All involved Federal agencies can agree either to conduct their own administrative reviews and to coordinate the results or to have the investigations conducted by the primary Federal agency, but, in either event, the primary Federal agency will be responsible for the final determination of the claim.

(3) A claimant presenting a claim arising from an incident to more than one agency should identify each agency to which the claim is submitted at the time each claim is presented. Where a claim arising from an incident is presented to more than one Federal agency without any indication that more than one agency is involved, and any one of the concerned Federal agencies takes final action on that claim, the final action thus taken is conclusive on the claims presented to the other agencies in regard to the time required for filing suit set forth in 28 U.S.C. §2401(b). However, if a second involved Federal agency subsequently desires to take further action with a view towards settling the claim the second Federal agency may treat the matter as a request for reconsideration of the final denial under 28 CFR §14.9(b), unless suit has been filed in the interim, and so advise the claimant.

(4) If, after an agency final denial, the claimant files a claim arising out of the same incident with a different Federal agency, the new submission of the claim will not toll the requirement of 28 U.S.C. §2401(b) that suit must be filed within six months of the final denial by the first agency, unless the second agency specifically and explicitly treats the second submission as a request for reconsideration under 28 CFR §14.9(b) and so advises the claimant.

(c) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

14.3 ADMINISTRATIVE CLAIM; WHO MAY FILE

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

14.4 ADMINISTRATIVE CLAIMS; EVIDENCE AND INFORMATION TO BE SUBMITTED

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

14.5 REVIEW BY LEGAL OFFICERS

The authority to adjust, determine, compromise, and settle a claim under the provisions of section 2672 of Title 28, United States Code, shall, if the amount of a proposed compromise, settlement, or award exceeds $1,000, be exercised by the head of an agency or his designee only after review by a legal officer of the agency.

14.6 LIMITATION ON AGENCY AUTHORITY

(a) An award, compromise, or settlement of a claim by an agency under the provisions of section 2672 of Title 28, United States Code, in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when, in the opinion of the agency:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000

(c) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when the agency is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

14.7 REFERRAL TO DEPARTMENT OF JUSTICE

When Department of Justice approval or consultation is required under section 14.6 or the advice of the Department of Justice is otherwise to be requested, the referral or request of the Federal agency shall be directed to the Assistant Attorney General, Civil Division, Department of Justice, in writing and shall contain (a) a short and concise statement of the facts and of the reasons for the referral or request, (b) copies of relevant portions of the agency's claim file, and (c) a statement of the recommendations or views of the agency. Such referrals or requests to the Department of Justice may be made at any time after presentment of a claim to the Federal agency.

14.8 INVESTIGATION AND EXAMINATION

A Federal agency may request any other Federal agency to investigate a claim filed under section 2672, Title 28, United States Code, or to conduct a physical examination of a claimant and provide a report of the physical examination. Compliance with such requests may be conditioned by a Federal agency upon reimbursement by the requesting agency of the expense of investigation or examination where reimbursement is authorized, as well as where it is required, by statute or regulation.

14.9 FINAL DENIAL OF CLAIM

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 USC 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the agency for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, the agency shall have 6 months from the date of filing in which to make a final disposition of the claim, and the claimant's option under 28 USC 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final agency action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a).

14.10 ACTION ON APPROVED CLAIMS

(a) Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to the provisions of section 2672 of Title 28, United States Code, shall be paid by the head of the Federal agency concerned out of the appropriations available to that agency. Payment of an award, compromise, or settlement in excess of $2,500 shall be obtained by the agency by forwarding Standard Form 1145 to the Claims Division, General Accounting Office. When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee. When the use of Standard Form 1145 is required, it shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent or legal representative, of any award, compromise, or settlement made pursuant to the provisions of section 2672 or 2677 or Title 28, United States Code, shall be final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

14.11 SUPPLEMENTING REGULATIONS

Each agency is authorized to issue regulations and establish procedures consistent with the regulations in this part.

2041–2049 RESERVED

PART C–MILITARY CLAIMS ACT

2050 SCOPE OF PART C

The regulations of Part C apply exclusively to the administrative processing of claims against the Navy arising under the Military Claims Act (10 USC §2733).

2051 DEFINITIONS

As used in this part (sections 2050-2059):

a. The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

b. The words "military personnel or civilian employees of the Navy" include all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, volunteer workers and others serving as employees of the Navy with or without compensation, and members of the Environmental Science Services Administration or of the Public Health Service who are serving with the Navy or Marine Corps.

c. Military includes "naval."

2052 STATUTORY AUTHORITY

a. *General authorization.* Subject to the statutory exceptions set forth in section 2055d, the Secretary of the Navy–or the Judge Advocate General, subject to appeal to the Secretary–may settle and pay, in an amount not in excess of $25,000, a claim against the Navy for damage to or loss or destruction of real or personal property, or for personal injury or death, either caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss or destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise (10 USC §2733(a)).

b. *Authorization for payment of claims in excess of $25,000.* If the Secretary of the Navy considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 10 USC §2733 and subsection a of this section, he may make a partial payment of $25,000 and refer the excess to the General Accounting Office for payment from appropriations provided therefor. *See* 31 USC §724a (Supp. III 1979).

c. *Delegable authorization to pay claims not in excess of $5,000.* In any case where the amount to be paid is not more than $5,000, the Secretary of the Navy may delegate the authority of 10 USC §2733(a) and subsection a of this section, subject to appeal to the Secretary or his designee for that purpose (10 USC §2733(g)). *See* section 2080 for the Navy and Marine Corps officials with delegated authority to pay claims, and *see* section 2053h for the appellate designees under this subsection.

d. *No right to sue.* The Military Claims Act authorizes the settlement and payment of certain claims but does not authorize any right to sue the United States. The United States has consented to be sued in tort under 28 USC §1346(b) only, and, by virtue of 10 USC §2733(b)(2), Federal tort claims are not payable under the Military Claims Act.

e. *Territorial limitations.* There is no geographical limitation on the application of the Military Claims Act, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 USC §2734), the claim shall be processed under Chapter XXII of this Manual (10 USC §2733(b)(2)).

2053 THE ADMINISTRATIVE CLAIM

a. *Proper claimant.* In determining if a claimant is the proper party to pursue the claim, the provisions of sections 2011 and 2034a apply. Where the claim is for wrongful death, however, only one claim shall be allowed and any payment shall be apportioned according to section 2056b.

b. *Proper claim and presentation.* A claim is proper in form and presentation if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, together with a claim for money damages in a sum certain.

c. *Evidence and information in support of the claim.* See section 2013 for the evidence and information required to substantiate a claim. 10 USC §2733(b)(5) requires that a claim be substantiated in accordance with these regulations in order to be paid.

d. *Amendment of the claim.* A proper claim may be amended by the claimant at any time prior to a final disposition of the claim. An amendment of a claim shall be submitted in writing and shall be signed by the claimant or a duly authorized agent or legal representative.

e. *Payment of the claim.* Payment of a claim shall be accomplished in accordance with section 2017.

f. *Settlement agreement.* See section 2018 and Appendices A-20-b(1) and A-20-b(2). The provision concerning fee limitations is not applicable in Military Claims Act cases.

g. *Denial of the claim.* See section 2019.

h. *Appeal of the claim.*

(1) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. Such appeal shall be in writing and shall state the grounds relied upon.

(2) An appeal in any case where the amount in contention exceeds $5,000 may be decided either by the Secretary of the Navy or the Judge Advocate General, except that, where the claim is disapproved originally by the Judge Advocate General, an appeal thereof shall be decided by the Secretary.

(3) An appeal in any case where the amount in contention is $5,000 or less may be decided either by the Secretary of the Navy, the Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), or the Deputy Assistant Judge Advocate General (Claims); provided, any such appeal must be decided by an official senior to the official who originally disapproved the claim.

(4) See section 2020c for procedure for disposing of an appeal.

2054 AUTHORITY TO SETTLE

See section 2080.

2055 SCOPE OF LIABILITY

a. *Caused by a member or employee.* Subject to the exceptions of subsection d, the Navy shall be responsible under 10 USC §2733 in money damages for damage to or loss or destruction of property, real or personal, or for personal injury or death, which is caused by military personnel or civilian employees of the Navy while acting within the scope of their employment.

b. *Otherwise incident to noncombat activities.* Subject to the exceptions of subsection d, a claim for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, is payable under the Military Claims Act if otherwise incident to noncombat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operations of missiles, aircraft, and antiaircraft equipment; sonic booms; use of barrage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

c. *Specific claims payable.* Claims payable by the

Navy under subsections a and b shall include, but shall not be limited to:

(1) *Registered or insured mail.* Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act. This provision of the Act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or be otherwise incident to noncombat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Postal Service of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or for delivery to the addressee. For this reason, the maximum award to a claimant under the provisions of this section shall be limited in amount to that to which the claimant would be entitled from the Postal Service in accordance with the registry or insurance fee paid. The amount of the award shall not exceed the cost of the item to the claimant, however, regardless of the fees paid. The claimant may be reimbursed for the postage and registry or insurance fees as elements of the cost.

(2) *Loaned or rented to the Government.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government, under an agreement expressed or implied, are payable under the Military Claims Act, even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

(3) *Personal property of prisoners of war.* Claims of prisoners of war or interned enemy aliens for damage to or destruction of personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy.

(4) *Real property under lease or otherwise.* Claims for damage to real property incident to the use and occupancy thereof by the Government, whether under an express or implied lease or otherwise, are payable under the provisions of the Military Claims Act even though legally enforceable against the Government as contract claims. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

d. *Claims not payable.* Notwithstanding subsections a, b, and c, the following claims shall not be paid under 10 U.S.C. §2733:

(1) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, his agent, or his employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by that law;

(2) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat;

(3) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States;

(4) Any claim of military personnel or civilian employees of the United States for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service which claim is cognizable under the Military Personnel and Civilian Employees' Claims Act as amended (31 U.S.C. §§240-243) and applicable regulations (chapter XXI of this Manual);

(5) Any claim arising in a foreign country or possession thereof which is cognizable under the Foreign Claims Act (10 U.S.C. §2734) and applicable regulations thereto (chapter XXII of this Manual);

(6) Any claim cognizable under 10 U.S.C.

§7622 relating to admiralty claims and to claims for damages caused by naval vessels (chapter XII of this Manual);

(7) Any claim for damage to or loss or destruction of real or personal property founded in written contract, except as provided in subsections c(2) and (4) of this section;

(8) Any claim for rent of real or personal property, except as provided in subsections c(2) and (4) of this section;

(9) Any claim involving the infringement of patents;

(10) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Postal Service to authorized military personnel or civilian employees of the Navy (*e.g.*, designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, or postal officers);

(11) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of, or while in the hands of, bonded personnel;

(12) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Postal Service (*e.g.*, for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee;

(13) Any claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States;

(14) Any claim for personal injury or death of military personnel or civilian employees of the Government if such injury or death occurs incident to their service; and

(15) Any claim for damage, injury, or death caused by a member or employee of the Department of the Navy while acting within the scope of his employment, and which is in all other respects within the cognizance of the Federal Tort Claims Act and Part B of this chapter.

2056 MEASURE OF DAMAGES

In cases cognizable under the Military Claims Act (10 USC §2733), the measure of damages shall be as follows:

a. *Damage to property.*

(1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value thereof immediately after the incident. All estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs, and provided that idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

b. *Personal injury or death.* In claims for personal injury or death, the measure of damages may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury, and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim will be allowed. The amount approved therefor shall, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

c. *Limitations.* Payment shall not be made for the following elements of damage: interest, cost of preparation of claims, attorneys' fees, inconvenience, and other similar items. The cost of repair estimates reasonably required to process the claim, however, may be paid.

d. *Setoff of a recovery from a joint tort-feasor.* If a claimant has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award by the Government to the claimant.

2057 STATUTE OF LIMITATIONS

No claim may be settled under the Military Claims Act unless it is presented in writing within two years after it accrues. If such accident or incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within two years after its occurrence, any claim may, on good cause shown, be presented within two years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President (10 USC §2733(b)(1)).

2058-
2059 RESERVED

PART D–CLAIMS NOT COGNIZABLE UNDER ANY OTHER PROVISION OF LAW

2060 SCOPE OF PART D

The regulations of Part D apply exclusively to the administrative processing and consideration of claims against the Navy arising under 10 USC §2737. These claims are sometimes referred to as "nonscope" claims and are claims that are not cognizable under any other provision of law.

2061 DEFINITIONS

a. *Civilian official or employee.* Any civilian official or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

b. *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 USC 4).

c. *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the Government.

2062 STATUTORY AUTHORITY

a. *General authorization.* 10 USC §2737 provides authority for the administrative settlement in an amount not to exceed $1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or a civilian official or employee incident to the use of a vehicle of the United States at any place, or incident to the use of any other property of the United States on a Government installation.

b. *No right to sue.* There is no right to sue the United States on a claim arising under 10 USC §2737.

c. *Territorial application.* There is no geographical limitation on the application of 10 USC §2737.

2063 PROPER CLAIM AND CLAIMANT/ PROCESSING OF THE CLAIM

a. *General.* The general claims provisions of Part A apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be processed under 10 USC §2737 and this part of Chapter XX.

b. *Claims submitted pursuant to another statute.* Claims submitted under the provisions of the Federal Tort Claims Act or Military Claims Act shall, in appropriate cases, be considered automatically for an award under this part when payment would otherwise be barred because the employee or serviceman was not in the scope of his employment. If a tender of payment under this part is not accepted by the claimant in full satisfaction of his claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute pursuant to which it was submitted.

c. *Claims submitted pursuant to this statute.* Claims submitted solely pursuant to 10 USC §2737 shall be promptly considered. If a claim is denied for any reason, the claimant shall be informed in writing of this fact and that he may appeal such decision (see section 2019b) within 30 days of the notice of denial by writing to the Secretary of the Navy (Judge Advocate General). See section 2020b(2).

2064 OFFICIALS WITH AUTHORITY TO SETTLE

See section 2080

2065 SCOPE OF LIABILITY AND MEASURE OF DAMAGES

a. *Scope of liability.* Subject to the exceptions of subsection b, the responsibility of the United States shall be in money damages, not to exceed $1,000, for damage to or loss or destruction of property or for personal injury or death caused by military personnel or civilian officials or employees:

(1) incident to the use of a vehicle of the United States at any place; or

(2) incident to the use of any other property of the United States on a Government installation; and

(3) not cognizable under any other provision of law.

b. *Specific claims not payable.* A claim may not be allowed under 10 USC §2737:

(1) If the damage to or loss of property, or the personal injury or death, was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee;

(2) In the case of personal injury or death, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States;

(3) Unless it is presented in writing within two years after it accrues;

(4) Unless the amount tendered is accepted in writing by the claimant in full satisfaction of any claim against the United States arising from the incident;

(5) To the extent that the claim or any part thereof is legally recoverable by the claimant under an indemnifying law or an indemnity contract;

(6) If it is a subrogated claim; or

(7) If it is cognizable under any other provision of law.

c. *Measure of damages.* Compensation under 10 USC §2737 for damage to or loss or destruction of property, or for personal injury or death shall be computed in accordance with section 2056, except that damages for personal injury or death under this part shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States, and except that in no case under this part shall an award for damages be in excess of $1,000.

2066 STATUTE OF LIMITATIONS

A claim against the United States under 10 USC §2737 shall be presented in writing within 2 years from the date it accrues or be forever barred.

2067-
2069 RESERVED

PART E–ADVANCE PAYMENTS

2070 SCOPE OF PART E

The regulations of this part apply exclusively to the payment of amounts not to exceed $1,000 under 10 USC 2736 in advance of submission of a claim.

2071 STATUTORY AUTHORITY

10 USC 2736 authorizes the Secretary of the Navy or his designee to pay an amount not in excess of $1,000 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the Military Claims Act (10 USC 2733) or the Foreign Claims Act (10 USC 2734). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

2072 OFFICIALS WITH AUTHORITY TO MAKE ADVANCE PAYMENTS

See section 2080.

2073 CONDITIONS FOR ADVANCE PAYMENTS

Prior to making an advance payment under 10 USC 2736, the adjudicating authority shall ascertain that:

a. The injury, death, damage, or loss would be payable under the Military Claims Act (10 USC 2733) or the Foreign Claims Act (10 USC 2734);

b. The payee, insofar as can be determined, would be a proper claimant under this chapter or under the Foreign Claims Regulations (chapter XXII), or is the spouse or next of kin of a proper claimant who is incapacitated;

c. The provable damages are estimated to exceed the amount to be paid;

d. There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

e. The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

f. No payment under 10 USC 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss (a) was caused by a member or employee of the Department of the Navy acting within the scope of his employment or (b) occurred "incident to noncombat activities" of the Department of Navy as defined in section 2055b.

2074-
2079 RESERVED

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Chapter XXI

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2100 AUTHORITY:

Sections 2101 to 2129 are issued under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 USC 240-243).

2101 DEFINITIONS

In this chapter:

a. *Claim.* "Claim" means any claim filed under oath by commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the Naval Establishment, for damage, loss, destruction, capture or abandonment of their personal property incident to their service.

b. *Service personnel.* "Service personnel" means the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

c. *Civilian employees.* "Civilian employees" means employees of the Naval Establishment, including those paid on a contract basis.

d. *Navy and naval.* "Navy" and "naval" include "Marine Corps" except where the context indicates to the contrary.

e. *Damage or loss.* "Damage or loss" includes destruction, capture, or abandonment.

2102 SCOPE

a. *Maximum payable.* Under this chapter, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable per incident on a claim is $25,000.

b. *Exception in evacuation/terrorist cases.* For losses incurred in foreign countries on or after 31 December 1978, if such loss or damage results from acts of mob violence, terrorist attacks, or other hostile acts directed against the United States Government or its officers or employees, or occurs as a result of an evacuation of personnel in accordance with a recommendation or order of the Secretary of State or other competent authority which was made in response to incidents of political unrest or hostile acts by people in that country, the maximum amount payable per incident on a claim is $40,000. The factual background concerning cases which appear to fall within this category shall be reported to the Judge Advocate General (Claims) for a determination as to the applicability of this subsection and for specific adjudication authority.

2103 CLAIMS PAYABLE

Claims are payable when the damage to or loss of the claimant's personal property occurs incident to his service under any of the following circumstances:

a. *Property losses in quarters or other authorized places.* Claims are payable where property is damaged or lost by fire, flood, hurricane, or other serious occurence, or by theft while located at:

(1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government on, or in connection with, a military or naval installation; or

(2) Quarters outside the United States occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see (1) and (2) of this subsection), designated by superior authority for the reception of the property.

b. *Transportation losses.* Claims are payable where property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a government contracted carrier, an agent or agency of the Government, or by a private conveyance:

(1) when shipped under orders; or

(2) in connection with travel under orders; or

(3) in connection with travel in performance of military duty with or without troops.

c. *Marine or aircraft disaster.* Claims are payable where property is damaged or lost in consequence of perils of the sea and hazards connected with the operation of aircraft.

d. *Enemy action.* Claims are payable where property is lost, abandoned, damaged, or destroyed by:

(1) Enemy action or threat of such action;

(2) Combat, or movement in the field which is part of a combat mission;

(3) Guerilla, organized brigandage or other

belligerent activities, whether or not the United States is involved; or

(4) Unjust confiscation by a foreign power or by its nationals.

e. *Property subjected to extraordinary risks.* Claims are payable when property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official non-combat duties by the claimant, including but not limited to:

(1) Performance of duty in connection with civil disturbance, public disorder, or public disaster;

(2) Efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; or by

(3) Abandonment or destruction of property by reason of military emergency or by order of superior authority.

f. *Property used for benefit of Government.* Claims are payable where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

g. *Negligence of the Government.* Claims are payable where property is damaged or lost incident to the service of the claimant and the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment.

h. *Money deposited for safekeeping, transmittal, or other authorized disposition.* Claims for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, are payable where the funds were neither applied as directed by the owner nor returned to him.

i. *Claims for damage to or loss of motor vehicles.*

(1) Claims for damage to or loss of motor vehicles are limited to a maximum $1,000.00, not including the contents thereof, and are payable only if:

(a) The motor vehicle was located at quarters or other authorized places as defined in section 2103a of this chapter, or

(b) The damage to or loss was incurred in the authorized performance of official government business, or

(c) The damage to or loss was incurred while the motor vehicle was located on base, provided the loss or damage was caused by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism, or

(d) The damage to or loss was incurred under any of the circumstances contemplated by section 2103 a, b, d, e, or f of this chapter. See also section 2104g.

(2) Claims arising during the shipment of motor vehicles under permanent change of station orders are not subject to a $1,000.00 maximum.

(3) The following definitions pertain as used within this section.

(a) "Motor vehicles" includes automobiles, trucks, campers, recreation vehicles, boats, and motorcycles.

(b) "On base" means any fixed land area, wheresoever situated, controlled and used by United States military activities or other Department of Defense activities. Claims for damage to or loss of motor vehicles arising out of an incident occurring on board a base such as United States Naval Station, Rota, Spain (a Spanish Naval Base) or on board a NATO Base such as Allied Forces Southern Europe, Bagnoli, Naples, Italy, are not intended to be excluded by this section because the base is not "controlled" by the United States. Claims arising out of an incident occurring on board a foreign military base not controlled or used by United States military activities are intended to be excluded. In case of doubt, the matter should be referred to the Judge Advocate General (Claims).

(c) "Other unusual occurrence" does not include collision with another vehicle resulting from a traffic accident, a "hit and run", or a single-vehicle collision attributable to driver error. The term "vehicle" includes motor vehicles and non-motorized vehicles used for transportation. *See* section 2104g, infra.

(d) "Shipment" means transportation via government vessel, chartered commercial vessel, or by government bill of landing on commercial vessels, and includes storage, on-loading and off-loading incident thereto.

j. *House trailers.*

(1) The term "house trailer," as used in this chapter, denotes a residence designed to be moved overland. It includes all household goods, personal effects and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member or his dependents.

(2) Claims for loss of, or damage to, house trailers and their contents while on Government property are payable under subsection a(3). Claims

for loss of, or damage to, house trailers and their contents arising incident to shipment are payable under subsection b(1), provided that, when transported by other than the service member or an agent or agency of the Government, the carrier must have operating rights approved by the Interstate Commerce Commission if in interstate commerce, or under applicable State regulations when the shipment is within a single State.

(3) It is the owner's responsibility to place the house trailer (including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and the other parts of the house trailer) and its contents in fit condition to withstand the stress of normal transportation. The Government has the responsibility of insuring that the house trailer is inspected prior to movement to determine if it is roadworthy. Acceptance of a house trailer for shipment by a carrier is presumptive evidence that the house trailer was in condition to withstand the stress of normal transportation.

(4) The burden of proving a claim against the Government or the carrier rests on the claimant. However, the claimant can establish a *prima facie* case by proving that the damage occurred during transportation. Damage which is due to (a) the negligence of the carrier, or (b) collision while the house trailer is in the possession of the carrier, is the responsibility of the carrier. Damage which is due to apparent defects (*e.g.*, a heavily or unevenly loaded trailer; tires which are worn, undersized, or insufficient ply rating, or have deteriorated because of age or lack of use; undercarriage and frame sagging, bent, or of insufficient size or improper construction; loose panels; faulty brakes; missing equipment; etc.) unless noted by the carrier prior to acceptance for shipment, or unless otherwise excepted by contract with the Government, is also the responsibility of the carrier. If the claimant establishes that the damage occurred during shipment, the burden then shifts to the Government and the carrier to establish that they are not liable (*e.g.*, that the damage resulted solely from a latent structural defect).

(5) Evidence desirable for the proper adjudication of a house-trailer claim should include, but is not necessarily limited to, the following:

(a) Copy of the pre-move inspection report;

(b) Statement from claimant concerning condition of trailer prior to move, to include age of trailer, general condition, number and location of each prior move, whether any prior move resulted in damage, and, if so, type of damage and whether any prior claim has been paid;

(c) Copy of the damage report (generally prepared by the carrier);

(d) Government inspection, (include photographs of each area or item of damage where this may prove helpful);

(e) Statement from the driver of the towing vehicle as to the circumstances surrounding the damage, as well as detailed travel particulars;

(f) Repair bills or estimates as to the cost of repairs;

(g) Statements from the persons providing claimant with estimates of repair as to their professional opinion as to the cause or causes of each area or item of damage;

(h) Statements similar to the above by an engineer or by a member of the vehicle maintenance division of a public works department who possesses some expertise in this area;

(i) Statements from the carrier, manufacturer, and dealer as to the cause of the damage;

(j) Dates and places of all prior transportation of the trailer, and, if at Government expense, copies of the Government bills of lading.

k. *Theft from possession of claimant.* Theft from the person of the claimant is reimbursable if it is established that the theft occurred by use of force, violence, or threat to do bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreational facility operated or sponsored by the Department of Defense or any agency thereof, or in the performance of official duty. The theft must have been reported to appropriate police authorities immediately, or as soon as practicable, and it must have been reasonable for the claimant to have had on his person the quality and the quantity of the property allegedly stolen.

2104 CLAIMS NOT PAYABLE

Claims may not be allowed for:

a. ***Money or currency.*** Money or currency, except as provided for by section 2103h and 2103k, or when lost incident to a marine or aircraft disaster, or when lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee. The adjudicating authority should use the test of whether the claimant did the best he could under the circumstances to protect his property. Reimbursement for loss of money or currency will be limited to an amount which the adjudicating authority determines to have been reasonable for the claimant to have had in his possession at the time of the incident.

b. *Unserviceable property.* Worn-out or unserviceable property.

c. *Articles acquired for other persons.* Articles intended directly or indirectly for persons other than the claimant or members of his immediate household. This prohibition includes articles acquired at the request of others, and articles to be disposed of as gifts or to be offered for sale.

d. *Articles being worn.* Articles being worn, except under the circumstances described in section 2103c, d, e, and k above.

e. *Intangible property.* Intangible property, such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

f. *Property owned by United States.* Property owned by the United States, except where the claimant is responsible to an agency of the Government other than the Department of the Navy.

g. *Motor vehicles.* Motor vehicle claims for collision damage are not payable under this chapter, but may be paid by a military department under the Military Claims Act (Part C of Chapter XX) when caused by a member or employee of that department.

h. *Enemy property.* Enemy property or property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except when it is determined that the claimant is friendly to the United States. The prohibition also includes the property of prisoners of war or interned enemy aliens, and the property of civilian employees who have collaborated with an enemy, or with an ally of an enemy of the United States.

i. *Losses of insurers and subrogees.* Losses of insurers and other subrogees.

j. *Losses recovered from insurers or carriers.* Losses, or any portion thereof, which have been recovered from an insurer or carrier.

k. *Losses in unassigned quarters in the United States.* Claims otherwise cognizable under 2103a are not payable for property damaged or lost at quarters occupied by the claimant within the United States which are not assigned to him, or otherwise provided in kind by the Government.

l. *Contractual coverage.* Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

m. *Negligence of claimant.* Claims for lost or damaged personal property caused in whole or in part as a result of any negligence or wrongful act of the claimant, or any agent or employee of the claimant acting within the scope of employment. Negligence may be defined as failure to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances.

n. *Business property.* Property normally used for business or profit.

o. *Fees for obtaining estimates of repair.* Claims normally are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under these regulations. Where, however, in the opinion of the approving authority the claimant could not obtain an estimate without paying a fee, such a claim may be allowed in an amount reasonable in relation to the value and/or cost of repairs of the article involved, provided the evidence furnished clearly indicates that the amount of the estimate fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

p. *Theft.* In all cases where a claim is made for articles lost by theft, the claim is not payable unless evidence clearly establishes:

(1) That the claimant exercised due care in the protection of his property; and

(2) The existence of a larceny, robbery, burglary, or housebreaking.

q. *Trailers.* Loss or damage to trailers, including house trailers and integral parts thereof except as provided in 2103j. Household effects contained in trailers may be considered under 2103a(1) when the trailer is located in an assigned area on a Government installation.

r. *Violation of law or directives.* Property acquired, possessed, or transported in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

s. *Inconvenience expenses.* The expenses associated with the late delivery of household goods including but not limited to the expenses of food, lodging and furniture rental. While such a claim does not lie against the Government, the adjudicating authority and/or legal assistance officer should assist the member in filing his inconvenience expense claim with the commercial carrier concerned.

2105 TYPE AND QUANTITY OF PROPERTY

a. *Must be reasonable, useful, or proper.* Claims are payable under the provisions of this chapter only for such types and quantities of tangible personal property the possession of which shall be determined by the adjudicating authority to be reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage. Among such items of personal property is property required by law or regulations of the Navy to be possessed or used by its military personnel or civilian employees incident to their service.

b. *Ownership or custody.* Claims which are otherwise within the provisions of this chapter will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, or destruction, or for the sole reason that the claimant was not the legal owner of the property for which the claim was made (*e.g.*, borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant).

2106 COMPUTATION OF AWARD

a. *Cost of property as basis.* The amount awarded on any item of property will not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost will be based on the price paid in cash for the property or, if not acquired by purchase or exchange, the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value immediately before it was damaged or lost, less any salvage value. In lieu of deducting salvage value from the depreciated value of an item, the adjudicating authority may require surrender of the item to the Government upon payment of the full depreciated value. Items surrendered will be disposed of in the same manner as property coming into Government possession under the provisions of section 2113b of this chapter. If the cost of repair is less than the depreciated value of the property, then it is economically repairable, and the cost of repair is the amount payable.

b. *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Schedules of depreciation are issued by the Judge Advocate General to the adjudicators as guides for determining the estimated life of various classes of items.

c. *Expensive articles.* Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, will be based on the fair and reasonable purchase price of substitute articles of a similar nature.

d. *Acquisition.* Allowance for articles acquired by barter will not exceed the adjusted cost of the articles tendered in barter.

e. *Black market.* No reimbursement will be made for articles acquired in black market or other prohibited activities.

f. *Maximum allowances.* The Judge Advocate General will promulgate to the adjudicators from time to time guides for determining the maximum amount allowable for specific articles, and for establishing maximum quantities which will be allowed. In applying these guides the claimant's standard of living, income and social obligations, the size of his family, and his need to have more than the average quantities of particular items will be considered.

2107 STATUTE OF LIMITATIONS

No claim may be paid under the provisions of this chapter unless presented in writing within 2 years after such claim accrues; provided, that if the claim accrues in time of war, or in time of armed conflict in which the armed forces of the United States are engaged, or if war or such armed conflict intervenes within 2 years after date of accrual, it may, if good cause for delay is shown, be presented within 2 years after such good cause ceases to exist, but not later than 2 years after peace is established or armed conflict terminates.

2108 DEMAND ON CARRIER, CONTRACTOR, AND/OR INSURER

a. *Carrier.* Whenever property is damaged, lost, or destroyed while being shipped under Government bill of lading pursuant to authorized travel orders, the owner or claims investigating officer will file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract. When property is not shipped under Government bill of lading, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government under these regulations. This demand should be made against the last commercial carrier known or believed to have handled the goods, unless the carrier who was in possession of the property when the damage or loss occurred is known. In this event, the demand should be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document. If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

b. *Military Sealift Command.* A claim for loss, damage, or destruction of a privately owned vehicle or for household goods against an ocean carrier operating under a Military Sealift Command shipping contract and Government bill of lading is the responsibility of Military Sealift Command. No demand shall be made by individual claimants or by claim adjudicating authorities directly on an ocean carrier operating under such a contract. After payment of a claim against the Government involving loss, damage, or destruction of a privately owned vehicle or household goods by such an ocean carrier, one copy of the completed claim file shall be forwarded to Commander Military Sealift Command. Each file shall include the following:

(1) the payment voucher;

(2) the completed personnel claim form;

(3) the estimated or actual cost of repair;

(4) a document indicating the conditions of the item upon delivery to the carrier; and

(5) a document indicating the forwarding condition of the item upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available the sailing date. See the sample transmittal letter contained in Appendix section A-21-a.

c. *Nontemporary storage warehousemen.* Whenever property is damaged, lost, or destroyed while being stored under a basic agreement between the Government and the warehouseman, the owner or claims investigating officer will file a written claim for reimbursement with the warehouseman in accordance with the terms of the applicable storage agreement.

d. *Pack-and-crate contractors.* When loss or damage is the result of improper packing or crating, the claims-investigating officer will prepare and forward to the origin Navy Personal Property Office the fully documented claim against the packing-and-crating contractor including the following information:

(1) the applicable paragraph number of MIL-STD 212 and a written explanation of the deficiency;

(2) when available, photographs of the damage and of the external shipping container;

(3) a statement describing the external condition of the shipping container, i.e., any evidence of rough handling;

(4) a statement indicating whether or not there is any evidence of water damage to the external shipping container;

(5) a statement indicating whether cartons, crates, etc. were properly packed in the external shipping container and whether sufficient stuffing was added to prevent shifting of articles or packages inside the box as required by MIL-STD 212.

The origin Navy Personal Property Office will file the claim with the contractor and pursue it to settlement. If the origin transportation office was a non-Navy activity, the claims investigating officer will pursue the claim against the pack-and-crate contractor.

e. *Insurer.* Whenever the property which is damaged, lost or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of the concurrent claim against the Government as provided in section 2109.

f. *Failure to make demand on carrier, contractor, or insurer.* Failure to make demand or cooperate in preparing the Navy's demand on a carrier, contractor, or insurer, or to make all reasonable efforts to collect the amount recoverable from the carrier, contractor, or insurer, may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier, contractor, or insurer, had the claim been timely made or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing and prosecution of a claim or the evidence indicates that a demand was impracticable or would have been unavailing.

2109 CONCURRENT CLAIMS ON THE CARRIER, CONTRACTOR, OR INSURER AND THE GOVERNMENT

To expedite the settlement of household effects claims, the claim presented to the Government under these regulations should be submitted concurrently with the demand made against the carrier, contractor, and/or insurer. The claims investigating officer will prepare and submit the claim against the carrier, contractor, and/or insurer and will thereafter assume the responsibility of monitoring the claims against the carrier, contractor, or insurer to final settlement. The claimant shall be advised to direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim was filed, "Attention: Claims Investigating Officer." Further, any payment in settlement of the claim by the carrier, contractor, or insurer should be made payable to the Treasurer of the United States and forwarded to the commanding officer, "Attention: Claims Investigating Officer."

2110 FORM OF DEMAND ON CARRIER, CONTRACTOR, OR INSURER

Demands on a carrier, contractor or insurer should be made in writing on DD Form 1843 (Appendix section A-21-b) with a copy of DD Form 1845 (Appendix section A-21-d) attached. Equivalent forms or formats may be used if DD Form 1843 is not available or if the claimant has not utilized DD Form 1845 in the submission of his claim.

2111 RESPONSIBILITIES OF THE CLAIMANT REGARDING CLAIMS AGAINST CARRIERS, CONTRACTORS AND/OR INSURERS

In accordance with the provisions of this chapter, the claimant is required to take all reasonable action to perfect a timely claim against any responsible carrier, contractor, and/or insurer or to assist the Navy in the perfection of a timely claim. Failure to take exceptions at the time of delivery of household goods shipments or to make notification of later-discovered damage within a reasonable time is considered sufficient grounds for deducting, from the amount otherwise payable under the provisions of this chapter, the amount of any carrier, contractor, or insurance recovery jeopardized by failure of the claimant or his agent to act promptly and reasonably.

2112 TRANSFER OF RIGHT AGAINST THE CARRIER, CONTRACTOR, OR INSURER

The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his right, title, and interest in any claim he may have against any carrier, insurer, contractor, or other party arising out of the incident on which the claim against the United States is based. He will also furnish such evidence as may be required to enable the United States to enforce the claim.

2113 RECOVERIES FROM CARRIER, CONTRACTOR, AND/OR INSURER

a. *Monetary Recoveries.* In the event that a claimant receives payment from the United States under this chapter, and also receives compensation from a carrier, contractor, or insurer for the same loss, the United States shall request that the claimant reimburse the government with a view to ensuring that the claimant is not compensated twice for the same loss.

b. *Recovered Property.* When previously lost property is found, the claimant may, at his option accept all or part of the property and return that portion of the payment he has received from the United

States for the accepted property and surrender the remainder of the property to the Government. Surrendered property will be disposed of in accordance with standard disposal procedures.

2114 CLAIMS WITHIN PROVISIONS OF OTHER REGULATIONS

a. *Preemptive nature.* The provisions of this chapter are preemptive of other claims regulations in this Manual. However, claims not allowable under this chapter may possibly be allowable under Chapter XX, General Claims Regulations.

b. *Ship's store claims.* Claims arising from the operation of a ship's store laundry and dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

2115 CLAIMANTS

A claim may be presented only by a military member or civilian employee of the Navy, or in his name by his spouse as his authorized agent, or by any other authorized agent or legal representative. In the event the claim is filed by an agent or legal representative, this person must demonstrate his or her capacity to act in the claimant's behalf by submitting a power of attorney or other documentary evidence. If the military or civilian person is deceased, the claim may be presented by his survivor regardless of whether the claim arose before, concurrent with, or after the decedent's death. Survivors' claims will be presented in the following order of precedence:

a. Spouse;

b. Child or children;

c. Father or mother, or both;

d. Brothers or sisters, or both.

2116 FORM OF CLAIM

The claim will be submitted by presenting a detailed statement in triplicate, signed by or on behalf of the claimant, on DD Form 1842 (*see* Appendix section A-21-c) with DD Form 1845 attached (*see* Appendix section A-21-d). If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a fourth copy of the claims form clearly marked for this purpose must be included. If DD Forms 1842 and 1845 are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. Attention is directed to the following section which outlines the specific evidence required for particular classes of claims. Careful compliance with these requirements by the claimant in the preparation of his claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of the adjudicating authority to obtain additional evidence from the claimant.

2117 EVIDENCE IN SUPPORT OF CLAIMS

a. *General.* The claim should be supported by the evidence required on the claim form and, in addition, the following evidence when applicable:

(1) Corroborating statement from a person who has personal knowledge of the facts concerning the claim.

(2) Statement of property recovered or replaced in kind.

(3) Itemized bill of repair for damaged property which has been repaired.

(4) At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" means one who has experience in the line of needed repairs and is in a position to know the cost of repairs of such items in the current market. Exception to the above is permissible when in the opinion of the claims investigating officer the probable estimate fee will be out of proportion to the cost of repairs. In this situation, the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The name, address, and experience of each such "competent" person must be given. The adjudicating authority may reject any estimate or statement of the cost of repairs that does not meet the above standards. The claimant shall satisfy the claims investigating officer that items claimed as beyond economical repair are in fact in that condition.

(5) Proof of the change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property or, if not acquired by purchase or exchange, the value at the time of acquisition. The proof should be comprised of not less than two direct price quotations from the local market. In case there is no local market, the value may be properly fixed by the value at the nearest market, adding the cost of transportation. Should there be no available market, he should

submit at least one written estimate of the value from a competent person. "Competent person" in this instance is deemed to be one who, being apprised of the characteristics of the item in question, is able to render a knowledgeable estimate of its value at the time of loss. For items purchased outside the continental limits of the United States which do not contain qualities of identity to permit specific substantiation, allowances will be limited to a reasonable amount over and above the purchase price as agreed upon by the claimant and the claims officer. In this situation, allowance will not exceed double the cost of the item. Examples include custom-made items, unique items of clothing, art, household furnishings, and jewelry as distinguished from trademark items. In the event a claims officer by his experience knows that the approximate replacement cost in the area is close to what the claimant lists, the claimant will not be requested to submit evidence of the replacement cost. This fact, however, must be noted in the investigation report on the claim. In those cases where he knows the replacement cost to be less than the value claimed, he should include this information along with substantiating evidence.

(6) Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.

b. *Privacy Act requirements.* When any claimant within the scope of this chapter is requested by a person acting on the Government's behalf to supply personal information about himself which will be made a part of the claim file, the person making the request shall first provide the individual with a Privacy Act statement, in duplicate, containing the particular advice prescribed in SECNAVINST 5211.5 series. The Privacy Act statement to be given with regard to a claim within the scope of this chapter is contained in Appendix A-21-j. The original is to be signed by the claimant and made a part of the claim file, and the copy should be retained by the claimant. If the information from the claimant is requested orally, the Privacy Act statement should be orally summarized and explained as necessary to ensure that the claimant fully understands it.

c. *Waiver of written estimates.*

(1) Regardless of the total amount of the claim, the requirement for written estimates of the cost of repairs or replacement cost on any item for which the amount claimed is less than $100 normally will be waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise available is sufficient to support the claim.

(2) In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicating authority, and the claimant may submit written estimates or other supporting evidence in any case.

d. *Specific classes of claims.* Claims of the following types should be accompanied by the specific and detailed evidence as listed in this subsection.

(1) For property losses in quarters or other authorized places, a statement indicating:

(a) Geographical location;

(b) Whether quarters were assigned or provided in kind by the Government;

(c) Whether quarters were regularly occupied by the claimant;

(d) Name of authority, if any, who designated the place of storage of the property, if other than quarters;

(e) Measures taken to protect the property; and

(f) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

(2) For theft, a statement indicating:

(a) Geographical area of the loss;

(b) Facts and circumstances surrounding the loss, including evidence of larceny, burglary, or housebreaking (*e.g.*, evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and

(c) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention will be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(3) For transportation losses:

(a) Copy of orders authorizing the travel, transportation or shipment, or in lieu thereof a certificate explaining the absence of orders, and stating their substance;

(b) All bills of lading, and inventories of property shipped;

(c) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies (*see* sections 2108 and 2109);

(d) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and

(e) Where property was turned over to a Quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

Name (or designation) and address of Quartermaster, transportation officer, supply officer, or contract packer,

Date property was turned over,

Condition when property was turned over,

When and where property was packed, and by whom,

Date of shipment and re-shipment,

Copies of all manifests, bills of lading and contracts,

Date and place of delivery to claimant,

Date property was unpacked,

Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage,

Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and

Whether the last common carrier or local civilian carrier was given a clear receipt.

(f) At the time of application for shipment of household goods, the claimant shall prepare an inventory of personal property to be shipped having a value of $200 or more. The inventory or listing shall be descriptive and in detail, and shall list those items of personal property of a value of $200 or more *that will not otherwise appear on the carrier-prepared inventory* (*i.e.*, an antique chair valued at $350 would not be packed in a carton but would normally be separately listed on the carrier-prepared inventory, but a $250 movie camera would normally be packed in a carton with other items vice being listed separately on the carrier-prepared inventory). The claimant-prepared inventory shall be countersigned by an appropriate individual at the office where application for the move is made. The original of the claim-prepared inventory shall be retained by the claimant and submitted as part of his claim in the event of loss or damage to any item listed thereon. A copy thereof shall be retained by the office where application for the move is made. Nothing contained in this subsection shall relieve the claimant from also supplying evidence to support the value of the loss. Failure to prepare the inventory/listing described *supra* may be considered grounds for disallowing compensation for a claimed item. Nonetheless, if a claimant fails to prepare and submit the inventory/listing described *supra*, for whatever reason, or inadvertently omits an item or items from the inventory, he may still be compensated for the loss or damage to items which should have been listed on the claimant-prepared inventory if the claim is accompanied by proof of ownership which may be, for instance, in the form of purchase receipts, cancelled checks, photographs, or statements of disinterested persons who observed such items in claimant's home.

(4) For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

(5) For enemy action, public disaster, or public service:

(a) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(b) A detailed statement of facts and circumstances showing applicable causes enumerated in 2103d and e.

(6) For property used for benefit of Government:

(a) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and

(b) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

(7) For money deposited for safekeeping, transmittal, or other authorized disposition:

(a) Name, grade, service number, and address of the person or persons who received the money and of other persons involved;

(b) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested (see article 1922, U.S. Navy Regulations, 1948); and

(c) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

2118 FILING OF CLAIM

All claims coming within the cognizance of this chapter should, if practicable, be submitted by the claimant or his authorized agent to the commanding officer or officer-in-charge of the military activity, installation, or unit nearest to the point of delivery of the goods or where investigation of the facts and circumstances can most conveniently be made. As an alternative, the claim may be submitted to the commanding officer or officer-in-charge of the activity, installation, or unit to which the claimant belongs or is attached. Acceptance of a claim for filing will not be refused even though the claim does not appear to be within the scope of these regulations or could have been filed with another activity. Commanding officers and officers-in-charge will accept claims made by civilians, members of another armed force, veterans, or on behalf of a deceased person.

a. *Air Force claim.* Claims of Air Force personnel and civilian employees of the Air Force will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Air Force installation.

b. *Army claim.* Claims of Army personnel and civilian employees of the Army will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Army installation.

c. *Demands on carriers.* Demands on carriers will be the responsibility of the claimant's parent service.

2119 APPOINTMENT OF CLAIMS INVESTIGATING OFFICERS

Each commanding officer shall, as appropriate, appoint one or more claims investigating officers to investigate, process, and make recommendations on all claims presented to him under this chapter. Commanding officers of major or separate commands and commanding officers processing an appreciable number of claims may appoint one or more claims investigating officers on a continuing basis. This is particularly pertinent to activities receiving many shipments of household effects. Claims investigating officers will receive their technical guidance from the Judge Advocate General.

2120 INVESTIGATION OF CLAIMS

Upon receipt of a claim filed in accordance with the provisions of this chapter, the commanding officer shall refer the claim, with all available information relating thereto, to the claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate. Direct correspondence between investigating officers and commands or other naval personnel is authorized for the purpose of tracing the location or disposition of missing baggage or effects. With regard to the requirements of the

Privacy Act of 1974 (5 U.S.C. § 552a) as it pertains to obtaining personal information from claimants or witnesses, sections 0308, 2007a(5) and (7), 2009b, and 2117 apply.

2121 RECOVERY ACTION IN TRANSPORTATION AND STORAGE LOSSES

a. *Filing of concurrent claims against carriers, contractors, and insurers.* Upon submission of a claim against the Government, the claims investigating officer will prepare and submit the claim to the appropriate carrier, contractor, and/or insurer for damage, loss, or destruction of household and personal effects being shipped pursuant to authorized travel orders.

b. *Concurrent claims against carriers, contractors, and insurers.* The claimant should provide the claims investigating officer with all documents, papers, and other evidence needed to press the claim against the carrier, contractor, and/or insurer. In return, the claims investigating officer shall advise the claimant that the claim will be monitored to final settlement. The claimant will notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of liability. Any subsequent correspondence with the carrier, contractor, and/or insurer shall be identified properly with the company's claim or reference symbols.

c. *Approval or denial of concurrent claim by carrier, contractor, or insurer.*

(1) The claims investigating officer shall report any denial of a claim by a carrier, contractor, or insurer to the command where the claim has been forwarded for adjudication.

(2) Upon receipt of approval of the claim by a carrier, contractor, or insurer, the claims investigating officer shall determine that the offered settlement is representative of the contractual liability for which the claim has been made, then forward the settlement to the adjudicating authority. The adjudicating authority will review the settlement and forward it for deposit to the appropriate account.

(a) If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award. Upon acceptance of the award, the claims investigating officer shall notify the adjudicating authority (a suggested speed-letter format is shown in Appendix A-21e).

(b) If the claimant has already received full payment from the Government, he will pay the proceeds received from the carrier, contractor, and/or insurer to the United States by endorsing the check to the Treasurer of the United States and delivering it to the command or to the claims investigating officer. If the amount to be refunded, as determined according to section 2113, is less than the amount received, remittance may be made by personal check or money order payable to the Treasurer of the United States.

d. *Nonconcurrent claims.* If an independent claim has been filed against a carrier, contractor, and/or insurer, the claimant will be asked, at the time the claim is filed with the Government, to certify whether or not he has obtained any recovery from any other party. A sample certificate is contained in Appendix A-21f. If any recovery has been obtained, appropriate comment indicating the amount recovered shall be made by the claims investigating officer on the claim being forwarded to the adjudicating authority. If action by the carrier, contractor, and/or insurer is still pending, the claimant will advise them to address all correspondence to him in care of the claims investigating officer of the command, unit, or activity at which the claim was filed, Attention: Claims Investigating Officer. The claimant shall be advised to notify the claims investigating officer promptly as to any offer of settlement or denial of liability. Forwarding of the claim to the appropriate adjudicating authority will not be delayed pending action of a carrier, contractor, and/or insurer unless it is apparent that final action by the carrier, contractor, and/or insurer will be immediately forthcoming.

e. *Failure of carrier, contractor, and/or insurer to respond.* Normally an acknowledgement, or perhaps even final action, will be received from the carrier, contractor, and/or insurer within ten days after the claim is submitted to them. In the event a response is not received to the claim or to subsequent correspondence, the matter should be reported to the origin transportation officer as a matter bearing upon the adequacy of contractual performance. The origin transportation officer will render assistance in obtaining action from the company and report the actions taken to the claims investigating officer who will monitor the claim against the carrier, contractor, or insurer until a reply has been received from the origin transportation officer.

f. *Unjustified denials by the carrier, contractor or insurer.*

(1) *Government bill of lading carriers.*

(a) *Action by the claims investigating officer.* If a Government bill-of-lading carrier or its insurer has refused to acknowledge or respond to a claim within a reasonable time (normally 30 days if applicable regulations or agreements do not specify another time limit), if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, then, in addition to initiation of administrative action as appropriate under Interstate Commerce Commission Regulations, military tender of service, or other applicable regulation or agreement, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. A copy of the referral letter with enclosures will be sent to the origin-transportation officer. The carrier should be notified of this action by a copy of the referral or by separate correspondence.

(b) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a final demand on the carrier when liability is clear. The final demand shall set forth the exact amount of liability, in view of the supporting evidence, owed by the carrier under the terms of the Government bill of lading, the basis for the determination of the amount demanded, and notification that the demand is a final demand and that the file will be forwarded for involuntary collection by withholding amounts due from the Navy if payment is not received within 30 days. If, after 30 days from the date of the final demand, reimbursement from the carrier has not been received, the case file should be forwarded to the Commanding Officer, Naval Material Transportation Office, Code 023, Bldg. 2133-5, Naval Station, Norfolk, VA 23511, requesting that the amount demanded by the final demand be setoff against subsequent Government bill of lading earnings. The amount of withholding requested must be the amount of the final demand. If the amount of the final demand is in error, a new 30-day final demand must be made. In general, a carrier should not be permitted to continue negotiations after a final demand has been made. If a misunderstanding between the claims investigating officer and the carrier is obvious from the file, negotiation prior to a final demand may be desirable. Under normal circumstances, however, if the claims investigating officer and the carrier have been unable to reach agreement, a final-demand amount should be determined and a final demand made. The carrier should not be permitted to further delay payment of his legal liability by meaningless negotiation.

(2) *Nontemporary storage warehousemen.*

(a) *Action by the claims investigating officer.* If a nontemporary warehouseman or his insurer has refused to acknowledge or respond to a claim within a reasonable time, if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, the matter shall be referred to the adjudicating authority who paid the claim. The referral shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims investigating officer's opinion as to liability. The warehouseman should be notified of this action by a copy of the referral letter or by separate correspondence.

(b) *Action by the adjudicating authority.* The adjudicating authority shall review the entire file and shall make a further demand on the warehouseman or his insurer when liability seems clear. If recovery is not effected within 30 days from this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the appropriate area Military Traffic Management Command (MTMC) Headquarters for a final determination of liability by the officer administering the warehouseman's basic agreement.

(3) *Pack-and-crate contractors.* When the origin Navy personal property office, or the destination claims investigating officer on a shipment originating at a non-Navy transportation office fails to receive adequate response or recovery from a pack-and-crate contractor within 60 days or when a claim is denied by the contractor without sufficient justification, the matter should be referred immediately to the officer administering the contract under which the services were performed. In the case of a shipment originating at a non-Navy transportation office, the referral should be made via the origin transportation office. Each referral will include a full statement, with supporting evidence, substantiating that the contractor's denial of the claim is unjustified or that the settlement offer is inadequate. Due to the relatively short duration of pack-and-crate contracts, it is desirable to expedite processing of unjustified denials.

(4) *Other carriers, contractors, or insurers.* Unjustified denial by other carriers, contractors, or insurers will be referred by the claims investigating officer to the adjudicating authority. The adjudicating authority will review the entire file and shall make a further demand on the carrier, contractor, or insurer when liability seems clear. If recovery is not received within 30 days from the date of this demand, or negotiations likely to result in an adequate recovery are not underway at that time, the file will be forwarded to the Judge Advocate General for additional recovery action.

g. *Processing of carrier checks.* On occasion, a carrier will send a check for an amount less than the adjudicated amount of the claim against the carrier, and which contains a standard liability release statement on the reverse thereof. Such a check should *not* be deposited. The check should be returned to the carrier with a demand for the full amount due. Language as follows is appropriate:

> Your check in the amount of $(*amount*) in response to our letter (*date*) is hereby returned as not being an acceptable settlement offer. The adjudicated amount of your liability in this case is $(*amount*), and demand is hereby made for the full amount. Unless your check for the full amount is received within 30 days, the full amount will be set-off from amounts otherwise due to you.

2122 PREPARATION OF CLAIMS INVESTIGATING OFFICER'S REPORT

a. *General.* The claims investigating officer will prepare a written report of investigation including his recommendations. Sufficient copies will be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one copy retained at the command. Only one set of supporting papers, documents, and exhibits need be forwarded to the adjudicating authority. The claims investigating officer may, at his discretion, utilize DD Form 1844 (*see* Appendix A-21-h) as a worksheet in appropriate cases and attach a copy of the form to his report.

b. *Regular claims procedure.* The claims investigating officer's report shall include a statement of all additional facts and circumstances not pointed out by the claimant, including any facts overlooked or incorrectly stated by the claimant in his statement of the facts and circumstances of the incident, and specific recommendations regarding any items for which reimbursement in an amount less than the full amount claimed, less normal depreciation, if applicable, is recommended due to preexisting damage, inflated estimates of repair, economically repairable property claimed as beyond repair, salvage value of property, or other factors. Specific recommendations shall also include designation of those repair and replacement costs for which written estimates have been waived in accordance with section 2117b of this chapter and an explanation of any unusual circumstances justifying nonroutine processing of the claim. Any convenient format can be used for the written report as long as all relevant information is included. Appendix A-21-g shows a sample report. The claims investigating officer will complete and sign part III of DD Form 1842 (see Appendix A-21-c(2)) when investigation of the claim is complete.

c. *Privacy Act requirements.* It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. § 552a) and SECNAVINST 5211.5 series. Any indication of noncompliance shall be explained either in the investigative report on the forwarding endorsements and, when required, remedied in accordance with section 0308. The claims adjudicating authority has the responsibility to ensure that remedial action is taken to rectify noncompliance indicated in the investigative report prior

to forwarding the report to the Judge Advocate General.

d. *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report and exhibits may be found shall be included.

e. *Small-claims procedure.* When the total amount claimed is $500 or less and the claims investigating officer has determined that all damage or loss claimed was actually incurred, that the amounts claimed are accurate and reasonable, and that the full amount claimed, limited by normal depreciation where applicable, should be allowed, he may complete part II of DD Form 1842 (*see* Appendix section A-21c(3)) in lieu of making a more detailed written report. Preparation of DD Form 1842, part II, for certification and signature by the adjudicating authority shall constitute a finding that the claim is properly presented and substantiated and a recommendation for payment in full less normal depreciation, if applicable. The foregoing small-claims procedure is not applicable to claims by Marine Corps personnel.

f. *Forwarding of claims.* For all claims not including enlisted uniform items to be replaced in kind, a claims investigating officer representing a Navy Personal Property Office or Marine Corps Transportation Office may, with the permission of his Commanding Officer, forward the claim file and claims investigating officer's report directly to the cognizant adjudicating authority. All other claims should be forwarded to the cognizant adjudicating authority via the Commanding Officer.

2123 ACTION BY COMMANDING OFFICER

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. (*See* section 2124e.) The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, *and* replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

a. *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigating officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

b. *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

c. *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in Appendix section A-21-i.

2124 ADJUDICATING AUTHORITY

a. *Claims by Navy personnel*

(1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

(a) The Judge Advocate General

(b) Deputy Judge Advocate General

(c) Any Assistant Judge Advocate General

(d) The Deputy Assistant Judge Advocate General (Claims)

(e) Commandant, Naval District Washington and his/her staff judge advocate

(f) Commanding officers of naval legal service offices

(g) The Staff Judge Advocate attached to Naval Supply Center, Oakland, and Naval Activities, United Kingdom.

(2) The following are authorized to adjudicate and authorize payment of personnel claims up to $10,000:

The Staff Judge Advocate attached to Naval Base, Guantanamo; Naval Base, Roosevelt Roads; Naval Station, Panama Canal.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $5,000:

(a) Officers in charge of naval legal service office detachments;

(b) Any judge advocate attached to a naval legal service office when specifically designated by the officer in charge;

(c) The Staff Judge Advocate attached to Naval Supply Center, Puget Sound;

(4) All Navy judge advocates are hereby designated and authorized to adjudicate and authorize payment of personnel claims up to $1,000;

(5) Any Navy judge advocate may be authorized to adjudicate personnel claims up to $25,000 when specifically designated by the Judge Advocate General;

(6) Any naval officer, when personally designated by the Judge Advocate General, is authorized to adjudicate and authorize payment of personnel claims up to $1,000; and

(7) Authorization to adjudicate and authorize payment of personnel claims up to a specific dollar amount is indicated *supra*, or by separate correspondence from the Judge Advocate General. Authorization to adjudicate claims up to a specific dollar amount is separate and distinct from holding an allotment. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General. Commands holding allotments from the Judge Advocate General are indicated in Appendix A-21-i.

b. *Claims by Marine Corps personnel.*

(1) The following are authorized to adjudicate and authorize payment of personnel claims up to $25,000:

(a) Commandant of the Marine Corps;

(b) Deputy Chief of Staff for Manpower;

(c) Director, Personnel Services Division.

(2) The following office is authorized to adjudicate and authorize payment of personnel claims up to $1,500:

(a) Head, Personal Affairs Branch, Personnel Services Division.

(3) The following are authorized to adjudicate and authorize payment of personnel claims up to $500:

(a) Head, Claims Section, Personal Affairs Branch, Personnel Services Division; and

(b) Deputy Head, Claims Section, Personal Affairs Branch, Personnel Services Division.

c. *Claims by nonappropriated-fund employees.* Claims by employees of Navy nonappropriated-fund activities for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this chapter and forwarded to the appropriate nonappropriated fund activity for payment from nonappropriated funds. Claims by employees of Marine Corps nonappropriated fund activities should be referred directly to the appropriate nonappropriated fund activity for investigation and payment.

d. *Partial payments when hardship exists.*

(1) Every instance of loss or damage cognizable under this chapter can be expected to cause some degree of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file, and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made. Each authorization of partial payment must be accompanied by:

(a) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a statement that he is aware of the penalties imposed by title 18 section 287 of the United States Code for willfully making a false claim. The claimant may present his statement on a Personnel Claim form (DD Form 1842 with DD Form 1845 attached) for the purpose of compliance with this requirement.

(b) A statement by the claims investigating officer confirming that the claimant is a proper claimant under the provisions of this chapter and setting forth his opinion regarding the reasonableness amount and type of additional substantiation necessary before investigation of the claim can be completed, and any other information relevant to the hardship of the claimant or his family.

(c) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this chapter and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this section.

(2) Inasmuch as all claims by Marine Corps personnel (military and civilian), except claims by nonappropriated fund employees, are adjudicated within Headquarters Marine Corps, Washington, D.C., and there are no field adjudicating authorities for Marine Corps personnel, the Marine claimant's Commanding Officer shall ensure compliance with all requirements of section 2124d(1)(a) through (c), and may request authority for payment by message from the Commandant (Code MSPA-4).

e. *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in subsection (a) above, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this chapter. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this chapter. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy. Accounting data for replacement of uniform items is: 97-0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 042, bureau control number 13003, authorization accounting activity 065872, transaction type 2D cost code 000000099250. Where replacement in kind is not possible because of the transfer of functions from the local Retail Clothing Store (small stores) to the Navy Exchange, normal claims procedures should be followed.

f. *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will

be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2.

2125 LIMITATION ON AGENT OR ATTORNEY FEES

a. *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended,

(31 USC 240-243), the statutory authority underlying this chapter, provides in section 243 that:

"No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under the authority of sections 240-243 of this title shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of sections 240-243 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1000."

b. *Federal tort claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision concerning certain Federal tort claims as described in section 2039.

c. *Other prohibition.* The provisions concerning an attorney's fee set forth in a above does not authorize a fee in those cases where a fee is prohibited for other reasons (*see* SECNAVINST 5801.1B, Legal assistance program, paragraph 15).

2126 SEPARATION FROM SERVICE

Separation from the service or termination of employment shall not bar former military personnel or civilian employees from filing claims or bar the authority of the designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provisions of these regulations when such claim accrued prior to separation or termination.

2127 MERITORIOUS CLAIMS NOT OTHERWISE PROVIDED FOR

Meritorious claims within the scope of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 USC 240-243) which are not otherwise provided for in this chapter, may be forwarded via official channels to the Secretary of the Navy (Judge Advocate General) for consideration. Exceptional meritorious cases may be approved for payment by the Secretary of the Navy or by the Judge Advocate General.

2128 RECONSIDERATION AND APPEAL

a. *General Policy:*

(1) A claim may be reconsidered which was previously disapproved in whole or in part, even though final settlement has been made, when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or as subsequently submitted. Where a claim is denied either in whole or in part, the claimant shall be given written notification of the initial adjudication and of the right to submit a written request for reconsideration to the original adjudicating authority within six months from the date the claimant receives notice of the initial adjudication of the claim. Any adjudicating authority may reconsider a claim upon which that authority has originally acted upon the request of a claimant or someone acting in the claimant's behalf, and may settle it by granting such relief as may be warranted. If it is determined that the original action was erroneous or incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. A claim which has been denied in whole or in part may be reconsidered on the adjudicating authority's own initiative.

(2) The forwarding endorsement of all adjudicating authorities shall contain specific reasons why the claim was denied, in whole or in part, or why the requested relief was not granted, and shall address the specific points or complaints raised by the claimant's request for reconsideration.

b. *Appeals procedure for claims submitted by Navy personnel.*

If an adjudicating authority does not grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire original file and the adjudicating authority's recommendation, to the nearest appropriate $25,000 adjudicating authority for final disposition. Final reconsideration of claims initially adjudicated by $25,000 adjudicating authorities will be made by the Judge Advocate General. (*See* section 2124a).

c. *Appeals procedure for claims submitted by Marine Corps personnel.* Where Marine Corps adjudicating authorities listed in subparagraph 2124b(1) fail to grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire original file and the adjudicating authority's recommendation, to the Judge Advocate General. Appeals of claims adjudicated by all other Marine Corps adjudicating authorities will be forwarded in the same manner as above to the Director, Personnel Services Division, Headquarters Marine Corps, for final disposition.

2129 AUTHORIZATION FOR ISSUANCE OF INSTRUCTIONS

The Judge Advocate General of the Navy may issue such amplifying instruction or guidance as may be considered appropriate to give full force and effect to the purposes of this chapter.

Chapter XXII

FOREIGN CLAIMS REGULATIONS

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2201 GENERAL

Claims for personal injury to, or death of, any inhabitant of a foreign country or damage to, or loss of, real or personal property of a foreign country, political subdivision, or inhabitant of a foreign country, occurring outside the United States, its territories, commonwealths, or possessions and caused by its military forces or individual members thereof (whether military personnel or civilian employees) or otherwise incident to noncombat activities of such forces are within the scope of the Foreign Claims Act (10 U.S.C. §2734). The word "claims" as used in this chapter refers to those demands for payment submitted by individuals, partnerships, associations, or corporations, including foreign countries, and states, territories, and other political subdivisions of such countries, other than such demands for payment as arise under ordinary obligations incurred by the Department of the Navy in the procurement of services or supplies.

2202 PURPOSE

The purpose of the Foreign Claims Act (10 U.S.C. §2734) is "to promote and maintain friendly relations" in foreign countries "through the prompt settlement of meritorious claims." The regulations of this chapter are to be so administered as to effectuate this expressed purpose of Congress.

2203 TERRITORIAL APPLICATION

The provisions of this chapter are applicable to claims arising outside the United States, its territories, commonwealths, or possessions. The fact that a claim arises at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States does not preclude consideration of such a claim which would otherwise be within the Foreign Claims Act.

2204 ACTS NOT WITHIN SCOPE OF EMPLOYMENT

The doctrine of scope of employment has no application to foreign claims arising from the acts of military personnel and other-than-indigenous civilian personnel. Foreign claims arising from the acts of indigenous civilian personnel may be allowed only if such employee was acting within the scope of his employment, unless, and only to the extent that, an employer or owner of the property involved would be held liable under local law under the circumstances.

2205 CRIMINAL ACTS

The fact that the act giving rise to the claim may constitute a crime does not bar relief. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the act of the military member or civilian employee of the United States which caused the damage, injury, or death was a crime or other wrongful act, or negligence, or mere error of judgment.

2206 ELEMENTS OF DAMAGE

In computing damages for personal injury or death or damage to personal property, the law and local standards of the country where the incident occurred, which were in effect on the date of the accrual of the claim, will be controlling. In case of death, only one claim will be considered, and the amount approved will be apportioned to beneficiaries in the proportions prescribed by local law and standards.

2207 BAILED OR LEASED PROPERTY

Claims for damage to, or loss or destruction of, personal property, otherwise within the Foreign Claims Act, may be settled notwithstanding the fact that the property was loaned, rented, or otherwise bailed to the Government under an agreement, expressed or implied. Claims for rent of personal property are not payable under these regulations.

2208 USE AND OCCUPANCY OF REAL PROPERTY

Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, expressed or implied, or otherwise, are payable under the provisions of these regulations even though legally enforceable against the Government as contract claims. Payment may, however, be precluded by the provisions of section 2213. Claims payable under this section may be processed as contract claims if it is deemed to be in the best interests of the Government. Claims for rent of real property are not payable under this chapter.

2209 OTHER NONCOMBAT ACTIVITIES

Claims for damage to, or loss or destruction of, property, or for personal injury or death, though not caused by acts or omissions of military personnel or civilian employees of the Navy, are payable under the provisions of this section if otherwise incident to the noncombat activities of the Navy. In general, the claims within this category are those arising out of authorized activities which are peculiarly military in nature, having little parallel in civilian pursuits, and which arise out of situations that historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of military personnel or civilian employees is present. Claims arising out of activities which involve the use of dangerous instrumentalities, such as explosives, or which result from maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and anti-aircraft equipment, movement of combat vehicles or other vehicles designed especially for military use, or the use of instrumentalities having latent mechanical defects are also included regardless of whether such resulting damage, injury, or death is traceable to acts or omissions of military personnel or civilian employees of the United States.

2210 PERSONS EXCLUDED AS CLAIMANTS

The following classes of claimants are among those excluded:

a. *Inhabitants of the United States.* Members and civilian employees of the Armed Forces of the United States and their dependents who are inhabitants of the United States and who are in a foreign country primarily because of their sponsors' or their own military orders; and

b. *Enemy aliens.* Nationals of a country at war with the United States, or any ally of such an enemy country, except as the Foreign Claims Commission considering the claim, or the local military commander shall determine that the claimant is friendly to the United States.

2211 CLAIMS EXCLUDED

The following classes of claims are excluded:

a. Claims purely contractual in character;

b. Private contractual and domestic obligations of individual military personnel or civilian employees;

c. Claims based solely on compassionate grounds;

d. Bastardy claims; and

e. Claims for patent infringements.

2212 NEGLIGENCE OR WRONGFUL ACT ON THE PART OF CLAIMANT

No claim will be allowed where the damage, injury, or death is proximately caused, in whole or in part, by negligence or wrongful act on the part of the claimant, his agent, or employee. This limitation is applicable to situations where, under the law of the country where the claim arises, contributory negligence bars recovery. However, if, under the law or custom of the country in which the claim arises, such contributory negligence or wrongful act is not recognized as a bar to recovery in tort claims, or is held to be a factor diminishing the extent of the claimant's recovery, then such local law or custom will be applied as far as practicable in determining the effect of such negligence or wrongful act.

2213 COMBAT ACTIVITIES

Claims for damage to, or loss or destruction of, property, or for personal injury or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act. *But see* 10 U.S.C. §2734(b)(3).

2214 CLAIMS OF SUBROGEES

In cases of damage to or loss or destruction of property or personal injury or death covered by insurance, settlement will be made solely with the insured or his legal representative, rather than with the insurer, or with both the insured and the insurer. No inquiry will be made into the relative interests as between insured and insurer. The entire claim, including any portion covered by insurance, will be filed by, or on behalf of, the insured and payment of the entire amount allowed will be made to the insured as the real claimant. Claims by insurers in their own right are not within the provisions of the Foreign Claims Act and will not be considered. Insurers presenting such claims shall be informed that subrogation claims are not recognized under the Act. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney or other documentary evidence satisfactory to the Foreign Claims Commission.

2215 STATUTE OF LIMITATIONS

A claim may be allowed under this chapter only if presented within two years after it accrued. A claim presented to a foreign government under applicable treaty or agreement within this time limit satisfies this requirement.

2216 NATURE OF CLAIM

Any claim will be considered if it states the material facts with such definiteness as to give reasonable notice of the time, place, and nature of the accident or incident out of which the claim arose and an estimate or statement of the damage, loss, destruction, injury, or death resulting. The claim should be signed by, or on behalf of, the claimant and should, if practicable, be under oath. In cases in which the claim is made in behalf of the true claimant, satisfactory evidence of authority to act for the claimant must be furnished.

2217 CLAIMS FOR DAMAGE OCCASIONED BY NAVAL VESSELS

Unless specifically authorized by the Judge Advocate General in each case, the Foreign Claims Commission shall not assume jurisdiction or proceed to hear any claim for damage occasioned by a naval vessel. This provision applies to claims for damage caused to land structures as well as claims of an admiralty nature. The occurence of any such damage, if brought to the attention of a claims commission, shall be reported immediately to the Judge Advocate General: Attention Admiralty Division.

2218 APPOINTMENT AND AUTHORITY OF FOREIGN CLAIMS COMMISSION

a. *Appointing Authority.* All Navy commanding officers are hereby granted authority to appoint Foreign Claims Commissions. All Marine Corps commanding officers are granted authority to appoint Foreign Claims Commissions, provided a member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps is appointed to the commission. All claims which are presented to Marine Corps commands which do not have a member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps attached will be forwarded to the nearest Navy or Marine Corps command with an active Foreign Claims Commission. For the purposes of the Foreign Claims Act and these regulations, the Judge Advocate General; the Officer in Charge, U.S. Sending State Office for Italy; Chiefs of Naval Missions (including chiefs of the naval section of military missions); Chiefs, Military Assistance Advisory Groups (including Chiefs, Navy Section, MAAGS); and naval attaches, are to be considered commanding officers. Commissions may be appointed to consider each claim as presented or one commission constituting a standing claims commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented shall refer the claim to such a commission.

b. *Composition of commissions and limitations on adjudicating authority.* Claims commissions may consider claims in any amount, and are hereby granted authority to approve in full or in part, or to dissapprove, claims for not more than $25,000. Allowance of any claim, however, in excess of the following amounts is subject to the approval of the Judge Advocate General, Deputy Judge Advocate General, or the Assistant Judge Advocate General (Civil Law), or, with respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy.

(1) One-officer commission–$5,000;

(2) One-officer commission composed of a member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps–$10,000;

(3) Three-officer commission–$10,000; and

(4) Three-officer commission which includes at least one member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps–$20,000.

2219 MEMBERSHIP OF COMMISSIONS

Foreign claims commissions shall consist of one or three commissioned officers of the Navy or Marine Corps whose grades and experience are commensurate with the responsibilities to be executed in carrying out the purposes of the Foreign Claims Act. An officer of another armed force may serve on a Navy claims commission only with the consent of the Secretary of his department, or his designee, but will perform his duties under the regulations set forth in this chapter. When a naval officer is requested to serve on a claims commission of another armed force, the immediate commanding officer of such officer is hereby designated to determine his availability pursuant to the authority of 10 U.S.C. §2734(a).

2220 NO FORMAL PROCEDURE PRESCRIBED

No formal procedure for the conduct of an investigation of a foregin claim is prescribed. However, the investigative procedures as set forth in Chapter VI of this Manual should be followed as a guide. With regard to the requirements of the Privacy Act of 1974 (5 U.S.C. § 552a) as it pertains to obtaining personal information from claimants or witnesses other than foreign nationals, sections 0308, 2007(a)(5) and (7), 2009b, and 2013b apply. A transcript of the testimony of witnesses is not required, and only the substance of statements of witnesses need be recorded. It is desirable, however, that signed statements of material witnesses be made a part of the record. The formal rules of evidence need not be adhered to, and any evidence, regardless of its form, which the commission deems material may be received and evaluated.

2221 REPORT OF PROCEEDINGS

a. The commission shall make a written report of each claim. The report shall include:

(1) a copy of the appointing order creating the commission,

(2) the claim document,

(3) the dates of the proceedings,

(4) the amount claimed stated in the indigenous currency and the conversion into United States currency at the existing official rate of exchange on the date of initial consideration of the claim.

(5) a brief summary of the facts, including the date of incident giving rise to the claim, the date the claim was filed, the nature and extent of the damages or injuries, and the necessary jurisdictional facts,

(6) signed statements of material witnesses or transcripts of their oral testimony for claims in excess of the commission's authority,

(7) signed Privacy Act statements of the claimant and material witnesses other than foreign nationals,

(8) an evaluation of applicable local laws and customs,

(9) the date the commission reached its final determination,

(10) the amount awarded, or recommended to be awarded, stated in the indigenous currency and the conversion into United States currency at the existing official rate of exchange on the date of final determination,

(11) an explanation of the basis of any recommendation in excess of the commission's authority,

(12) a release from the claimant as required by section 2223 when an award has been accepted, or a copy of the notice of denial when the claim has been disallowed.

b. When the commission has approved a claim which is within its final adjudicating authority, the original of the report and all allied papers shall be submitted to the appointing authority.

c. When the commission recommends approval of a claim in excess of its adjudicating authority, a legible copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain the original of all papers for its files.

d. When the commission has disallowed for any reason a claim within its final adjudicating authority or has recommended disallowance of a claim in excess of its final adjudicating authority, the original and one copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain one copy for its files.

e. The commission's report will not be released or shown to the claimant without the express approval of the Judge Advocate General.

f. When a claim cannot be adjudicated and settled within 30 days of its submission, the report required in subsection a, to the extent possible, shall be immediately prepared and forwarded to the Judge Advocate General with an explanation of the delay.

2222 NOTIFICATION OF AWARD AND PAYMENT

a. *Notification:* When a commission determines that a claim is meritorious and approves an award within its authority to pay in accordance with section 2218b, or when a larger award has been approved by the Judge Advocate General, the claimant shall be notified. When a commission determines that a claim is meritorious and recommends payment of an amount in excess of its authority, the commission may advise the claimant that the matter has been referred to the Judge Advocate General of the Navy for consideration. Under no circumstances may the claimant be notified of the amount of the recommended award.

b. *Payment.* When a commission has approved an award for payment within its final adjudicating authority, or when a larger award has been approved by the Judge Advocate General, the convening authority shall submit the original and one copy of the commission's report and the release required by section 2223 to the nearest Navy or Marine Corps disbursing officer, or to any United States disbursing officer if no Navy or Marine Corps disbursing officer is reasonably available, for payment of the claim. Foreign claims are paid under an open allotment with fund citation as follows: 97-0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 421, bureau control number 11003, authorization accounting activity 065872, transaction type 2D, cost code 000000099252. Copies of paid vouchers will be forwarded immediately to the Naval Regional Finance Center, Code FSR 12332, CM3, Room 528, Washington, D.C. 20371 and to the Office of the Judge Advocate General, Department of the Navy, Code 07, 200 Stovall Street, Alexandria, Virginia 22332.

2223 RELEASES

a. A release shall be obtained from the claimant in every case in which an award is accepted.

b. The release executed by the claimant should release the United States and also release the tortfeasor or the persons who have occasioned the damage, injury, or death, if their identity is known. If the identity of such persons is unknown, the release should recite that the claimant also releases the person or persons who occasioned the damage, injury, or death, the names and identity of said person or persons being unknown to the claimant.

c. The release should preclude any possible future assertion of the claim for which the United States has made compensation.

d. A suggested release is contained in Appendix A-22-a.

2224 APPEAL AND RECONSIDERATION

a. *Appeal.* While there is no right to appeal from the action of a Foreign Claims Commission, the commission may reconsider its action upon the written request of the claimant or on its own initiative. If, after reconsideration, the commission again denies a claim, or the claimant declines to accept an award in full satisfaction of his claim, the commission's report shall be forwarded to the Judge Advocate General in accordance with section 2221d.

b. *Reconsideration.* The Judge Advocate General may refer a claim for reconsideration to the original commission, a successor commission, or to a commission convened by the Judge Advocate General.

2225 CLAIMS IN EXCESS OF $25,000

a. Foreign claims which cannot be settled for $25,000 or less will be promptly considered and reported to the Judge Advocate General for legal review and appropriate administrative action. The record in such proceedings shall include signed statements of material witnesses or transcripts of their oral testimony. The Foreign Claims Commission shall forward with any such claim its findings and recommendations as to the action to be taken (including its findings as to the extent and nature of the damage, injury, and/or death sustained) together with, if practicable, a statement from the owner of the property or the person injured, or the legal representative of the person killed, signifying his willingness to accept the amount so found in full satisfaction and final settlement of his claim. In all such cases, the original and two copies of the report, claim, and supporting papers shall be forwarded. The remaining copy should be retained by the commission for its files.

b. Upon review of the file, the Judge Advocate General will forward a recommended action to the Secretary of the Navy who will determine an appropriate resolution. The Secretary may authorize the claims commission to pay the claimant $25,000 and thereafter refer the excess to the General Accounting Office for payment from appropriations provided therefor. *See* 31 USC §724a (Supp. III 1979).

2226 CLAIMS OUTSIDE THE JURISDICTION OF THE COMMISSION

Claims arising from incidents on the high seas are ordinarily not within the jurisdiction of a Foreign Claims Commission. *See* section 2217. In cases in which a commission considers that the claimant (or decedent in the case of a death claim) is not an inhabitant of a foreign country, or is not the government or a political subdivision of a foreign country, reports shall be forwarded in triplicate to the Judge Advocate General as in cases under section 2225.

2227 CLAIMS ARISING IN SPECIFIED FOREIGN COUNTRIES

a. *NATO Status of Forces and similar agreements.* The United States has ratified the NATO Status of Forces Agreement and has entered into similar agreements with other foreign countries. Article VIII of the NATO Status of Forces Agreement and certain provisions of other agreements are inconsistent with the unrestricted use of the Foreign Claims Act and its implementing regulations in certain countries. Accordingly, directives of the cognizant area commander shall be consulted and claims shall not be referred to foreign claims commissions until it has been determined that such action is consistent with the provisions of the aforementioned agreements and their implementing directives. Department of Defense Directive 5515.3 series (NOTAL) directs that, where a single service has been assigned responsibility for claims in a country or area, all claims arising under the Foreign Claims Act (10 U.S.C. §2734) and the Military Claims Act (10 U.S.C. §2733) shall normally be settled and paid by claims commissions or other claims settlement authorities appointed by the Secretary of that military department, or his designee, in accordance with the department's regulations. In countries in which the NATO Status of Forces Agreement or other similar agreement is in force, incidents which may give rise to tort claims against the United States arising from acts or omissions of naval personnel, or members of the civilian component of the naval service, including claims for death or personal injury, resulting from the navigation or operation of a ship, or from the loading, carriage, or discharge of its cargo, shall be investigated and reports shall be made in accordance with instructions promulgated by the cognizant naval commanders.

b. *Single-service responsibility and cross-servicing.* Single-service responsibility for processing claims under this chapter shall be accomplished as provided in Chapter XX, section 2024. Where cross-servicing of claims has been accomplished, the forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.

2228 CLAIMS GENERATED BY CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Department of Defense Directive 5515.3 series (NOTAL) provides that all Foreign Claims Commissions are designated to settle and pay claims for damage caused by civilian employees of the Department of Defense other than an employee of a military department.

2229 ADVANCE PAYMENTS

Advance payments may be made pursuant to the provisions of sections 2070-73 and 2080. In addition to the adjudicating authorities authorized by section 2072 to make advance payments, all foreign claims commissions may make advance payments provided such action is approved by the Commanding Officer appointing the commission.

Chapter XXIII

NONAPPROPRIATED FUND CLAIMS REGULATIONS

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2301 GENERAL

a. Nonappropriated-fund activities are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Navy Department and if the degree of control and supervision by the Navy Department is more than casual or perfunctory. *Compare United States v. Holcombe*, 277 F.2d 143 (4th Cir. 1960) and *Scott v. United States*, 226 F.Supp. 846, (D. Ga. 1963). To the extent that sovereign immunity is waived by the Federal Tort Claims Act, therefore, the United States remains ultimately liable for payment of nonappropriated-fund-activity claims. It is policy to pay these claims from nonappropriated funds and to process them primarily through nonappropriated-fund-activity claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated-fund-activity claims.

b. Claims arising out of the operation of nonappropriated-fund activities, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated-fund activities. All claims should be submitted to the command having cognizance over the nonappropriated-fund activity involved.

2302 NOTIFICATION

Some nonappropriated-fund activities carry commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Naval Supply Systems Command determine whether nonappropriated-fund activities within their cognizance shall carry liability insurance or become self-insurers, in whole or in part. When the operations of nonappropriated-fund activities result in property damage or personal injury, the insurance carrier, if any, should be given written notification immediately. Notification *should not* be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability.

2303 PROCESSING CLAIMS

a. *Responsibility for processing.* The primary responsibility for the negotiation and settlement of claims resulting from nonappropriated-fund activities is normally with the nonappropriated-fund activity and its insurer. The standard procedures described in Chapter XX for investigating and processing claims must, however, be followed in order to protect the residual liability of the United States.

b. *Negotiations*

(1) When a nonappropriated-fund activity is insured, the insurer will normally conduct negotiations with claimants. The appropriate Naval adjudicating authority has the responsibility of monitoring the negotiations conducted by the insurer. Such monitoring shall be limited to ascertaining that someone has been assigned to negotiate, to obtaining periodic status reports, and to closing out files on settled claims. Any dissatisfaction with the insurer's handling of the negotiations should be referred directly to the Judge Advocate General for appropriate action.

(2) When there is no private insurer and the nonappropriated-fund activity has made no independent arrangements for negotiations, the appropriate Navy adjudicating authority is responsible for conducting negotiations. Under special circumstances, even when there is an insurer, the appropriate Naval adjudicating authority may conduct negotiations, provided the command involved and the insurer agree to it. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the nonappropriated-fund activity, or its insurer, for payment from nonappropriated funds.

(3) In cases where payment may be authorized under some statute, such as the Foreign Claims Act, but where there is no negligence and neither the nonappropriated-fund activity nor its insurer is legally responsible, the claim may be considered for payment from appropriated funds or may be referred to the Judge Advocate General for appropriate action.

c. *Denial.* Claims resulting from nonappropriated-fund activities may be denied only by the appropriate Naval adjudicating authority, since such a denial is required to begin the 6-month limitation on filing suit under the Federal Tort Claims Act. Claims which have initially been processed and negotiated by a nonappropriated-fund activity or its insurer should not be denied until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend in court. Claimants shall be notified of a denial in accordance with section 2019.

2304 PAYMENT OF CLAIMS

a. *Small claims.* Any claim not covered by insurance (or if covered by insurance and not paid by the insurer) which can be settled for $100 or less may be adjudicated by the commanding officer of the activity concerned or his designee. The claim will be paid out of funds available to the commanding officer.

b. *Other claims.* Claims in excess of $100, for which private insurance is not available and which have been negotiated by the Navy, shall be forwarded to the appropriate headquarters command for payment from nonappropriated funds. Private insurance is usually not available to cover losses which result from some act or omission of a mere participant in a nonappropriated-fund activity. In the event the nonappropriated-fund activity declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

2305 CLAIMS BY EMPLOYEES

a. *Property.* Claims by employees of nonappropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with Chapter XXI and forwarded to the appropriate nonappropriated-fund activity for payment from nonappropriated funds.

b. *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or of foreign nationals employed within the United States.* The compensation provided by the Longshoremen's and Harbor Workers' Compensation Act (33 USC 901-950) was extended to provide for employees of nonappropriated-fund activities who suffered injury or death arising out of and in the course of their employment (5 USC 8171). If there is a substantial possibility that an employee's injury or death is covered by the Longshoremen's and Harbor Workers' Compensation Act, a claim should first be made under that Act since it is the exclusive basis for Government liability for injuries or deaths which are covered (5 USC 8173).

c. *Personal injury or death of foreign nationals employed outside of the Continental United States.* Employees who are not citizens or permanent residents, and who are employed outside of the Continental United States, are protected by private insurance of the nonappropriated-fund activity or by other arrangements. (5 USC 8172). When a nonappropriated-fund activity has neglected to obtain insurance coverage or to make other arrangements, the matter will be processed as a foreign claim, or a Federal Tort Claims Act claim if appropriate, and any award will be paid from nonappropriated funds.

Chapter XXIV

AFFIRMATIVE CLAIMS REGULATIONS

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PART A—MEDICAL CARE CLAIMS

2401 DEFINITIONS

For purposes of this chapter:

a. *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

b. *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Claims);

(2) The commandants of all naval districts not served by naval legal service offices, and their district judge advocates;

(3) The officers in charge of all naval legal service offices, except naval legal service offices in countries where another service has single service responsibility;

(4) The officers in charge of U.S sending state offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

c. *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee, *e.g.*, where the tortfeasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

d. *The Act.* "The Act" means the Medical Care Recovery Act (42 U.S.C. §§2651-53)

e. *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

f. *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claim.

2402 AUTHORITY OF THE JUDGE ADVOCATE GENERAL AND JAG DESIGNEES

a. *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (*i.e.*, a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (*e.g.*, in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

b. *Authority of JAG and certain JAG designees.*

(1) The Judge Advocate General or any cognizant JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) Any cognizant JAG designee, after considering the factors set forth in section 2405, may compromise or waive any claim not in excess of $40,000 and issue a release therefor.

c. *Claims exceeding $40,000.* Claims in excess of $40,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

d. *Potential Value of Claims.* When settlement, compromise or waiver is imminent and the final NAVJAG 5890/12 has not been filed, JAG designees are authorized to estimate the potential value of the claim and to take appropriate action if the potential value comes within their settlement authority.

e. *Recomputation of Claims.* JAG designees are authorized to recompute the amount of claims reported on form NAVJAG 5890/12 in accordance with the standards of *Tolliver v. Shumate*, 151 W. Va. 105, 150 S.E.2d 579 (1966), and *United States v. Jones*, 264 F. Supp. 11 (1967). The information contained on the back side of form NAVJAG 5890/12, the particular practices of the hospital involved and the known facts of the case will be considered. Hospitalization periods may be subtracted from the claim when such hospitalization was unnecessary, (such as where a patient was given leave, liberty, or was awaiting assignment to new duties) or may be charged at the reduced rate of an outpatient visit for each day of hospitalization where medical treatment was actually rendered, but hospitalization in a civilian hospital would have been unnecessary or inappropriate. If, upon recomputation, the claim is within the authority of the JAG designee making such recomputation, the claim may be acted upon by that JAG designee.

f. *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice, (2) a suit has been instituted against the United States by the third party, or (3) a suit has been instituted against the individual who received or is receiving the medical care described above, and for whose negligence the United States may be held liable.

g. *Restrictions on contact with Department of Justice and United States Attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. Attorneys except in those cases (1) where the Department of Justice or a U.S. Attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3) where such action is authorized by the Judge Advocate General.

2403 REPORT OF CARE AND TREATMENT

a. *NAVJAG Form 5890/12.* The front side of NAVJAG Form 5890/12 (*see* Appendix section A-24-d(1)) shall be used by all Navy medical facilities to report the value of medical care furnished to any patient (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation, no-fault insurance, or under medical-payments insurance (*e.g.*, in all automobile accident cases). Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG Form 5890/12 shall show the patient the Privacy Act statement printed at the bottom of the form and shall have the patient sign his name beneath the statement.

b. *Computations.* The front side of NAVJAG Form 5890/12 shall be computed by using the rates set out in Appendix A-24-c (1) and (2). All computations by medical personnel and any necessary recomputations will be made pursuant to section 2402e.

c. *Submission of the front side of NAVJAG Form 5890/12.* The front side of NAVJAG Form 5890/12 shall be submitted to action JAG designee at the following times:

(1) An "initial" submission of the front side of NAVJAG Form 5890/12 shall be made as soon as practicable after the patient is admitted if it appears that inpatient care will last three or more days, or that more than ten outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of the front side of NAVJAG Form 5890/12 shall be made every four months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of the front side of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital.

The hospital to which the patient is transferred should be noted on the form. Report Control Symbol 5890-1 is assigned to this report.

d. *Supplementary documents.* A narrative summary (Standard Form 502) should accompany the final submission of the front side of NAVJAG Form 5890/12 in all cases involving inpatient care. In addition, when Government care exceeds $1,000, the hospital should complete and submit to the action JAG designee the back side of NAVJAG Form 5890/12 (*see* Appendix A-24-d(2). On this part of the form, the determination of "patient status" may be based on local hospital usage.

e. *Information for health record and for action JAG designees.* Copies of all NAVJAG Forms 5890/12 shall be retained in the health record of the patient. Action JAG designees shall be notified immediately when a patient receives treatment subsequent to the issuance of a "final" NAVJAG Form 5890/12 if the subsequent treatment is related to the treatment which gave rise to the claim.

f. *Treatment of non-naval personnel.* Where care is provided to personnel of another Federal agency or department by a naval medical facility, that agency or department generally will assert any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 shall be forwarded directly to the appropriate addressee as follows:

(1) *U.S. Army:* Commanding general of the Army or comparable area commander in which the incident occurred;

(2) *U.S. Air Force:* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided;

(3) *U.S. Coast Guard:*
Commandant (G-LCL/34)
U.S. Coast Guard Headquarters
2100 Second Street, N.W.
Washington, D.C. 20593

(4) *Department of Labor:* Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;

(5) *Veterans Administration:* Director of the Veterans Administration hospital responsible for medical care of the injured party;

(6) *Department of Health, Education, and Welfare:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred.

g. *Treatment of naval personnel by other Federal agencies.* Where medical care is provided to naval or Marine Corps servicemen, retirees, or their dependents by another Federal department or agency, the Department of the Navy generally will assert any claim on behalf of the United States. Appropriate forms should be forwarded to the action JAG designees.

h. *Civilian medical care.* The district medical officers and the district dental officers are responsible for paying emergency civilian medical expenses incurred by active-duty servicemen. Such officers should furnish evidence of payment to the action JAG designee (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (*e.g.*, in all automobile accident cases).

i. *CHAMPUS cases.* CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) contractors for hospital treatment have been directed by the Executive Director, OCHAMPUS, Denver, Colorado 80240, to forward reports of payments in injury cases directly to the action JAG designees. Reports of payments for physician and outpatient care may be obtained by JAG designees from the appropriate fiscal administrators.

2404 INVESTIGATIONS

a. *When required.* Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency, private facility, or individual under circumstances which may give rise to a medical care claim, an investigation shall be conducted in the manner and form prescribed in chapter XX. However, no investigation is required for the purposes of this chapter if the medical care furnished does not exceed three inpatient days or ten outpatient treatments. In cases where the Department of the Navy receives reimbursement from another department or agency for medical care furnished at a naval facility, that department or agency will normally be responsible for investigating the incident giving rise to the medical care and processing any resulting claim. See section 2403f for addresses of other departments and agencies.

b. *Consolidation.* Separate investigations are not required for the purposes of this chapter in cases where there has been an investigation for other purposes which can be used as a basis for determining liability. It shall be the responsibility of the action JAG designee, upon receipt of a NAVJAG Form 5890/12 or equivalent CHAMPUS forms, to supervise and to avoid duplication of investigative effort and to request an investigation in those cases where it appears that none has been or is likely to be conducted.

c. *Information for action JAG designee.* All investigations, regardless of origin, involving a possible medical care claim, shall be routed via, or a copy forwarded to, the action JAG designee.

2405 DETERMINATION, ASSERTION, AND COLLECTION OF CLAIMS

a. *Determination and notice of claim.* Action JAG designees, regardless of the amount of the claim, shall determine liability in accordance with the law of the state or country in which the incident occurs. If the JAG designee determines that a third party is liable, he shall forward a "Notice of Claim" (Standard Form 96) to the third party. If he determines that an insurance company or workmen's compensation carrier is liable, he shall forward the company an appropriate notice of the Government's claim. If he determines that there is no liability, this fact shall be reflected in the endorsement on any information forwarded to the Judge Advocate General. The specific reasons supporting the determination of no liability should be included. If the action JAG designee is in doubt on the question of liability, the matter should be submitted to the Judge Advocate General for final decision.

b. *Foreign claims.* Claims against a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such foreign government, shall not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof shall be made as provided in this chapter unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

c. *Advice for injured party.* In cases where an action JAG designee determines that third-party liability is indicated and a "Notice of Claim" (Standard Form 96) is issued, the injured party shall be contacted and advised in writing that:

(1) Under the Act, the United States is entitled to recover from the third party the value of medical care furnished or to be furnished by the United States to the injured party.

(2) The injured party may be required to: (a) furnish the action JAG designee any pertinent information concerning the incident; (b) notify the action JAG designee of any settlement offer from the third party or his insurer; and (c) cooperate in the prosecution of the Government's claim against the third party.

(3) The injured party may seek the advice of legal counsel concerning any possible claim he may have for personal injury and should furnish the action JAG designee the name and address of any civilian attorney consulted or retained.

(4) The injured party should not execute a release or settle any claim concerning the injury and should not furnish the third party, the third party's insurance company, or other representative of the third party, any information or signed statement without the approval of his attorney and the approval of the action JAG designee.

d. *Pursuit of claims*

(1) Action JAG designees shall, if possible, and if not contrary to the best interests of the United States, pursue to satisfactory settlement all claims coming within their authority. In those cases where administrative settlement is not possible, or is not

considered in the best interests of the United States, the action JAG designee shall determine whether the case should be closed and filed or forwarded to the Judge Advocate General for further action. However, the authority of any JAG designee to close and file cases shall be limited to those cases over which compromise authority is granted by section 2402b. Before action is taken on a file, the action JAG designee shall determine:

(a) whether the injured party has retained or intends to retain counsel;

(b) whether the tortfeasor denies liability and/or refuses to pay;

(c) in cases involving insurance, whether the insurance carrier denies liability and/or refuses to settle; and

(d) whether consideration has been given to asserting a claim under available uninsured-motorist or medical-payments coverages.

e. *Coordination with the injured party's claim*

(1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the Government's claim as an item of special damages in their client's claim or suit. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees neither may be paid by the Government (5 U.S.C. §3106) nor computed on the basis of the Government's portion of the recovery.

(3) If the injured party, or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

f. *Claims file.* In cases exceeding their settlement authority, or in other cases deemed appropriate, the action JAG designees shall take the action set forth in subsections a and b above, and shall forward the file to the Judge Advocate General for action. The claim file should contain the following information:

(1) The name, address, and occupation of each person determined to be a third party.

(2) In those cases where the third-party is a serviceman or an employee of the United States, a statement should be included regarding whether such person was acting within the scope of his official duties or employment at the time of the incident.

(3) The nature and extent of any insurance coverage of the third party with the name and address of the insurer.

(4) In vehicle accident cases where the third party is uninsured, a report as to whether any injured party, owner, driver, or passenger had uninsured-motorist coverage, whether such coverage was mandatorily offered by the insurer in accordance with a state requirement, and whether action has been taken under the financial-responsibility law of the situs.

(5) Completed copies of NAVJAG Forms 5890/12 (or equivalent forms of the other services) and a statement whether there will be any permanent disability and the degree thereof. If such forms are not presently available, then a statement to the effect that the action JAG designee will request the appropriate medical facility to forward them directly to the Judge Advocate General should be included. It shall be the responsibility of the action JAG designee to ensure that all completed copies of NAVJAG Forms 5890/12 and authorizations made by district medical or dental officers for payment for civilian care are forwarded to the Judge Advocate General in those cases where the file has been forwarded to the Judge Advocate General for action.

(6) The original or copies of all bills or statements of cost incurred where treatment is furnished by civilian facilities.

(7) A statement regarding liability of the third party. (Where liability is questionable, a brief of the law of situs applicable should be included.)

(8) A statement as to whether a "Notice of Claim" (Standard Form 96) was sent to the third party; the name, address, and phone number of the injured party's attorney, if any; and a statement as to

whether a suit has been or is likely to be instituted.

(9) A statement as to whether the injured party's attorney will protect the interests of the United States *i.e.*, whether the Government's claim will be included in the injured party's demand or suit.

(10) A recommended disposition of the case.

g. *Waiver and compromise requests.* In cases in which a compromise or a complete waiver of the Government's claim is requested, and the claim is beyond the settlement authority of the action JAG designee, the claims file shall be forwarded to the Judge Advocate General. In addition to the information required by section 2405e, the file should also contain detailed information as to:

(1) The anticipated amount of the gross recovery.

(2) The degree and permanency of any disability and the extent to which the Government otherwise is obligated to compensate the injured party for such disability.

(3) Whether the injured party is entitled to continuing medical care at Government expense.

(4) Out of pocket expenses incurred or anticipated by the injured party, including litigation costs and counsel fees.

(5) The present and prospective assets, income, and obligations of the injured party.

(6) Any other information indicating that full collection of the Government's claim would work an undue hardship upon the injured party.

h. *Payments.* Payments of claims should be made in the form of checks, drafts, or money orders payable to the collecting organization, such as "Commandant Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and are to be forwarded for deposit by the disbursing officer serving the collecting organization. (These receipts are to be credited to appropriation accounts as designated by the Comptroller of the Navy.)

2406 MEDICAL RECORDS

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members or former members of the Navy. Commanding officers of U.S. naval hospitals and U.S. naval dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative, subject to the limitations contained in chapter 23, Manual of the Medical Department. See section 1332 of this Manual concerning certifications where necessary for litigation.

2407 NOTICE OF CLAIM

The "Notice of Claim" (Standard Form 96) shall be used when a claim under the Act is asserted against a third-party tort-feasor. Substitute forms are not authorized. Locally-prepared forms are authorized, however, for claims not based upon third-party liability.

2408 STATISTICAL REPORTS

Action JAG designees shall forward monthly reports to the Judge Advocate General of all claims for medical care costs borne by the Government, including those asserted under workers' compensation plans, medical payments insurance, and no-fault insurance, setting forth the following information:

(1) The number of claims asserted during the month.

(2) The number of recoveries made during the month (In cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected).

(3) The dollar amount of claims asserted during the month;

(4) The dollar amount of recoveries made during the month (including partial recoveries), and

(5) The total number of active claims on file at the end of the month.

Report Control Symbol JAG-5890-11 is assigned to this report.

2409 GEOGRAPHICAL LIMITATIONS–SINGLE-SERVICE RESPONSIBILITY

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. See section 2024 for single-service responsibility.

2410 RATES FOR MEDICAL CARE PROVIDED IN FEDERAL HOSPITALS

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in Appendix A-24-c.

2411 SINGLE DEMAND FOR MEDICAL CARE AND PROPERTY DAMAGE CLAIMS

An effort should be made to include all medical care and property damage claims in a single demand for payment against a third-party or his insurance company.

2412 STATUTE OF LIMITATIONS

Pursuant to the provisions of 28 U.S.C. §2415(b), a 3-year statute of limitations exists for actions arising under the Federal Medical Care Recovery Act. Accordingly, consideration should be given to forwarding files to JAG in cases where it appears that the Government's claim is not adequately protected and that settlement of the Government's claim will not occur within the time prescribed by the statute.

2413 REFERENCE MATERIAL

The following aids and reference materials are contained in Appendix A-24:

A-24-a. Executive Order 11060 of 7 November 1962, authorizing the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act;

A-24-b. Department of Justice Order Number 289-62 (as amended), pursuant to Executive Order 11060;

A-24-c. Bureau of the Budget Rate Schedules, pursuant to Executive Order 11060;

A-24-d. NAVJAG Form 5890/12, (Rev. 3-78), "Hospital and Medical Care 3rd Party Liability Case,"

A-24-e. Standard Form 96, "Notice of Claim,"

A-24-f. Reserved.

A-24-g. Department of the Navy Promissory Note.

A-24-h. Sample report on property damage claims.

PART B–PROPERTY DAMAGE CLAIMS

2414 REGULATIONS CONCERNING AFFIRMATIVE CLAIMS

Property damage claims in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. §952), as implemented by the "Joint Regulations of the General Accounting Office and Department of Justice on Federal Claims Collection Standards" (Part C of this chapter). Department of Defense Directive 5515.11 of 10 December 1966 delegates to the Secretary of the Navy and his designees the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

2415 PURSUIT, SETTLEMENT, AND TERMINATION OF CLAIMS

a. *Authority to handle claims.* Subject to section 2415b, the following officers are authorized to pursue, collect, compromise, and terminate collection action on property damage claims in favor of the United States:

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Deputy Assistant Judge Advocate General (Claims);

(2) The commandants of all naval districts who are not served by naval legal service offices, and their district judge advocates;

(3) The officers in charge of all naval legal service offices, except naval legal service offices in countries where another service has single-service responsibility;

(4) Commanders, commanding officers, and officers in charge of overseas commands with a Navy or Marine Corps judge advocate attached, except in countries where another service has single-service responsibility.

b. *Claims over $20,000.* Claims in excess of $20,000 may not be compromised or terminated without the permission of the Department of Justice. The officers designated by section 2415a should pursue all Navy claims on behalf of the United States. If a compromise offer is obtained, or if termination is recommended, the claims file should be sent to the Judge Advocate General for referral to the Department of Justice. The file should include the information required by the Joint Regulations on Claims (Part C of this chapter).

c. *Releases.* The officers designated by section 2415a are authorized to execute a release on behalf of the United States (1) when full payment is received, (2) when a claim is under $20,000, or (3) when permission to compromise has been granted by the Department of Justice.

2416 COLLECTION OF CLAIMS

a. *Deposit of funds.* When a private party or his insurer tenders a full payment or a compromise settlement, the payment should be in the form of a check or money order made payable to the order of the collecting organization, such as the "Commandant, Twelfth Naval District" or the "Commander, U.S. Naval Forces Marianas." The check or money order should then be forwarded for deposit by the disbursing officer serving the collecting organization. Funds so collected are normally to be deposited to the Navy general fund receipt accounts as provided in the Navy Comptroller Manual.

b. *Navy Industrial Fund.* Where the loss or the cost of repairs has been borne by an industrial-commercial activity, payment should be deposited to the Navy Industrial Fund of the repairing activity. *See* Navy Comptroller Manual, paragraph 043114. When a claim is based upon loss or damage sustained by such an activity, a notation to this effect shall be included in any file forwarded to the Judge Advocate General.

c. *Rental automobile deductible damage claims.* When a rental automobile is damaged while in the possession of service personnel or Government employees on official business and a part of the damages are paid or reimbursed by the Government in accordance with Joint Travel Regulations [Volume 1, paragraph M4405-1 and Volume 2, paragraph C6101-3] officers authorized to take collection action under this Part shall endeavor to collect the amount of the Government's loss from any third-parties liable in tort. Collection action should not be directed at the personnel who rented the damaged vehicles. Collection efforts may be discontinued or claims compromised in accordance with the guidelines of Part C of this chapter.

d. *Property of nonappropriated-fund activities.* In instances of recovery because of loss or damage to property of a nonappropriated-fund activity, the amount recovered should be forwarded to the appropriate headquarters of the nonappropriated-fund activity for deposit to that activity. In those situations where the recovery involves damage to both nonappropriated-fund-activity-owned property and other Government property, *e.g.*, destruction by fire of an Exchange building resulting in damage to the building and to the Exchange-owned personalty contained therein, recovery from the tortfeasor for the Exchange-owned personalty should be forwarded to the nonappropriated-fund activity. Recovery for the building damage should be deposited to the Navy general fund receipt accounts as indicated in § 2416a. Appropriate documentation should be included in every claims file.

2417 REPAIR OF GOVERNMENT PROPERTY BY THE TORT-FEASOR

In some cases, a person who has damaged Government property (or his insurer) offers to repair the property or to arrange for its repair. The commanding officer or officer in charge of the activity concerned is authorized to accept such an offer if he considers it to be in the best interests of the Government. The commanding officer or officer in charge is also authorized to assure the private party that a full release of the claim of the United States will be executed (a) when the repairs are completed to the Government's satisfaction, and (b) when all repair bills have been paid by the private party. Such a procedure may be followed without the prior approval of the Judge Advocate General or his designee, and without first submitting an investigative report. When the investigative report is submitted, however, it shall contain a statement of the cost of the repairs and a statement by the commanding officer or officer in charge that the property has been satisfactorily repaired, and that all bills for repair have been paid.

2418 REFERRAL OF CASES TO THE DEPARTMENT OF JUSTICE OR GAO

Only the Judge Advocate General shall refer claims to the Department of Justice or to the General

Accounting Office. Before recommending such action, the command handling the claim should assure that full collection efforts (as required by part C of this chapter) have been completed.

2419 STATUTE OF LIMITATIONS

There is a 3-year statute of limitation on affirmative Government claims "founded upon a tort." 28 U.S.C. §2415(b). Uncollected affirmative claims should therefore be forwarded to the Judge Advocate General soon enough for timely referral to the Department of Justice. Any installment-payment agreement that will run beyond the statutory period should include a confess-judgment clause (*see* Appendix section A-24-g).

2420 REPORTS

The officers designated by section 2415a (2)-(4) shall make a quarterly report on property damage claims to the Judge Advocate General. The report should include the following figures:

(a) Number of claims asserted

(b) Dollar amount of claims asserted

(c) Number of claims collected

(d) Dollar amount of claims collected.

Report Control Symbol JAG 5890-3 is assigned to this report.

PART C–JOINT REGULATIONS ON CLAIMS COLLECTION

2421 JOINT REGULATIONS OF THE GENERAL ACCOUNTING OFFICE AND THE DEPARTMENT OF JUSTICE ON FEDERAL CLAIMS COLLECTION STANDARDS

Joint regulations of the General Accounting Office and the Department of Justice on Federal Claims Collection standards are quoted as follows:

TITLE 4–ACCOUNTS

CHAPTER 11–FEDERAL CLAIMS
COLLECTION STANDARDS
(GENERAL ACCOUNTING OFFICE–
DEPARTMENT OF JUSTICE)

Part
101 SCOPE OF STANDARDS

102 STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

103 STANDARDS FOR THE COMPROMISE OF CLAIMS

104 STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

105 REFERRALS TO GAO OR FOR LITIGATION

PART 101–SCOPE OF STANDARDS

Sec.
101.1 PRESCRIPTION OF STANDARDS

101.2 OMISSIONS NOT A DEFENSE

101.3 FRAUD, ANTITRUST, AND TAX CLAIMS EXCLUDED

101.4 COMPROMISE, WAIVER, OR DISPOSITION UNDER OTHER STATUTES NOT PRECLUDED

101.5 CONVERSION CLAIMS

101.6 SUBDIVISION OF CLAIMS NOT AUTHORIZED

101.7 REQUIRED ADMINISTRATIVE PROCEEDINGS

101.8 REFERRAL FOR LITIGATION

101.1 PRESCRIPTION OF STANDARDS

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section

3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, prescribe standards for the administrative collection, compromise, termination of agency collection action, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Manual for the Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to section 3 of the Federal Claims Collection Act of 1966 will be reviewed by the General Accounting Office as a part of its audit of the agency's activities.

101.2 OMISSIONS NOT A DEFENSE

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

101.3 FRAUD, ANTITRUST, AND TAX CLAIMS EXCLUDED

The standards set forth in this chapter do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, matters submitted to the Department of Justice for consideration without compliance with the regulations in this chapter because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations in this chapter if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted. Tax claims, as to which differing exemptions, administrative consideration, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

101.4 COMPROMISE, WAIVER, OR DISPOSITION UNDER OTHER STATUTES NOT PRECLUDED

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, providing for the compromise, termination of collection action, or waiver in whole or in part of such claim. See, *e.g.*, "The Federal Medical Care Recovery Act," 76 Stat. 593, 42 U.S.C. 2651, *et seq.*, and applicable regulations, 28 CFR 43.1, *et seq.* The standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by compromise or termination of collection action (other than by waiver pursuant to statutory authority) under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, to the extent such other statutes or authorized regulations issued pursuant thereto do not establish standards governing such matters.

101.5 CONVERSION CLAIMS

The instructions contained in this chapter are directed primarily to the recovery of money on behalf of the Government and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

101.6 SUBDIVISION OF CLAIMS NOT AUTHORIZED

A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than $20,000, exclusive of interest, for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, 80 Stat. 308.

101.7 REQUIRED ADMINISTRATIVE PROCEEDINGS

Nothing contained in this chapter is intended to require an agency to omit or foreclose administrative proceedings required by contract or by law.

101.8 REFERRAL FOR LITIGATION

As used in this chapter referral for litigation means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

PART 102–STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

102.1 AGGRESSIVE AGENCY COLLECTION ACTION
102.2 DEMAND FOR PAYMENT
102.3 COLLECTION BY OFFSET
102.4 REPORTING DELINQUENT DEBTS TO COMMERCIAL CREDIT BUREAUS
102.5 PERSONAL INTERVIEW WITH DEBTOR
102.6 CONTACT WITH DEBTOR'S EMPLOYING AGENCY
102.7 SUSPENSION OR REVOCATION OF LICENSE OR ELIGIBILITY
102.8 LIQUIDATION OF COLLATERAL
102.9 COLLECTION IN INSTALLMENTS
102.10 EXPLORATION OF COMPROMISE
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102.12 ANALYSIS OF COSTS
102.13 DOCUMENTATION OF ADMINISTRATIVE COLLECTION ACTION
102.14 AUTOMATION
102.15 PREVENTION OF OVERPAYMENTS, DELINQUENCIES AND DEFAULTS
102.16 ADDITIONAL ADMINISTRATIVE COLLECTION ACTION

102.1 AGGRESSIVE AGENCY COLLECTION ACTION

The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, his agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency.

102.2 DEMAND FOR PAYMENT

Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. In the initial notification the debtor should be informed of the basis for the indebtedness, the applicable requirements or policies for charging interest and reporting delinquent debts to commercial credit bureaus, and the date by which payment is to be made (due date). The due date should be specified and, normally, should not be more than 30 days from the date of the initial notification. Three progressively stronger written demands, at not more than 30-day intervals, will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require further rebuttal. Further exceptions may be made where it is necessary to protect the Government's interests (e.g. the statute of limitations (28 U.S.C. 2415)). Agencies should respond promptly to communications from the debtor. Agencies should advise debtors who dispute the debt to furnish available evidence to support their contentions.

102.3 COLLECTION BY OFFSET

Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C. 5514. Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as

amended, 31 U.S.C. 227. Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

102.4 REPORTING DELINQUENT DEBTS TO COMMERCIAL CREDIT BUREAUS

Agencies shall develop and implement procedures for reporting delinquent debts to commercial credit bureaus. In the absence of a different rule prescribed by statute, contract, or regulation, a debt is considered delinquent if not paid by the due date specified in the initial notification, unless satisfactory payment arrangements are made by the due date. Agency procedures for reporting delinquent debts to credit bureaus must give due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, which include the following requirements: (a) Promulgate a "routine use" for the disclosure; (b) keep an accounting for disclosures and make them available to the debtor; (c) provide the credit bureau with corrections and notations of disagreement by the debtor; and (d) make reasonable efforts to assure that the information to be reported is accurate, complete, timely, and relevant. Prior to exercising the option of reporting delinquent debts to commercial credit bureaus, agencies should send a demand letter advising the debtor that such reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed.

102.5 PERSONAL INTERVIEW WITH DEBTOR

Agencies will undertake personal interviews with their debtors when this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

102.6 CONTACT WITH DEBTOR'S EMPLOYING AGENCY

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C.

5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965, 3 CFR, 1965 Supp., p. 130 (30 F.R. 6469).

102.7 SUSPENSION OR REVOCATION OF LICENSE OF ELIGIBILITY

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim and the debtor will be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time and the debtor will be so advised. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

102.8 LIQUIDATION OF COLLATERAL

Agencies holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a non-judicial foreclosure should do so by such procedures if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

102.9 COLLECTION IN INSTALLMENTS

Claims, with interest in accordance with section 102.10 should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $10 per month should be accepted in only the most unusual circumstances. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice form USA-70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

102.10 EXPLORATION OF COMPROMISE

Agencies will attempt to effect compromises (preferably during the course of personal interviews), of claims of $20,000 or less exclusive of interest, in accordance with the standards set forth in Part 103 of this chapter in all cases in which it can be ascertained that the debtor's financial ability will not permit payment of the claim in full, or in which the litigative risks or the costs of litigation dictate such action.

102.11 INTEREST

In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual. When a debt is paid in installments, the installment payments will first be applied to the payment of accrued interest and the principal, in accordance with the so-called "U.S. Rule," unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See Rodgers v. United States, 332 U.S. 371.

102.12 ANALYSIS OF COSTS

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

102.13 DOCUMENTATION OF ADMINISTRATIVE COLLECTION ACTION

All administrative collection action should be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation should be retained in the appropriate claims file.

102.14 AUTOMATION

Agencies should automate their debt collection operations to the extent that it is cost effective and feasible.

102.15 PREVENTION OF OVERPAYMENTS, DELINQUENCIES AND DEFAULTS

Agencies should establish procedures to identify the causes of overpayments, delinquencies and defaults and the corrective actions needed. One action that should be considered is the reporting of debts or loans, when first established, to commercial credit bureaus.

102.16 ADDITIONAL ADMINISTRATIVE COLLECTION ACTION

Nothing contained in this chapter is intended to preclude the utilization of any other administrative remedy which may be available.

PART 103–STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

103.1 SCOPE AND APPLICATION

103.2 INABILITY TO PAY

103.3 LITIGATIVE PROBABILITIES

103.4 COST OF COLLECTING CLAIM

103.5 ENFORCEMENT POLICY

103.6 JOINT AND SEVERAL LIABILITY

103.7 SETTLEMENT FOR A COMBINATION OF REASONS

103.8 FURTHER REVIEW OF COMPROMISE OFFERS

103.9 RESTRICTIONS

103.1 SCOPE AND APPLICATION

The standards set forth in this part apply to the compromise of claims, pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, which do not exceed $20,000 exclusive of interest. The head of an agency or his designee may exercise such compromise authority with respect to claims for money or property arising out of the activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that office for litigation.

103.2 INABILITY TO PAY

A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of (a) the debtor's inability to pay the full amount within a reasonable time, or (b) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings. The agency will give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take. Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in section 102.8 of this chapter, in every case in which this is possible. If the agency's files do not contain reasonable up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Forms such as Department of Justice form DJ-35 may be used for this purpose. Similar data may be obtained from corporate debtors by resort to balance sheets and such additional data as seems required.

103.3 LITIGATIVE PROBABILITIES

A claim may be compromised pursuant to this part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight should be given to the probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. Cf. 28 U.S.C. 2412, as amended by Public Law 89-507, 80 Stat. 308.

103.4 COST OF COLLECTING CLAIM

A claim may be compromised pursuant to this part if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection having regard for the time which it will take to effect collection. Cost of collecting may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

103.5 ENFORCEMENT POLICY

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

103.6 JOINT AND SEVERAL LIABILITY

When two or more debtors are jointly and severally liable collection action will not be withheld against one such debtor until the other or others pay their proportionate share. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that compromise with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

103.7 SETTLEMENT FOR A COMBINATION OF REASONS

A claim may be compromised for one or for more than one of the reasons authorized in this part.

103.8 FURTHER REVIEW OF COMPROMISE OFFERS

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

103.9 RESTRICTIONS

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

PART 104–STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.

104.1 SCOPE AND APPLICATION

104.2 SUSPENSION OF COLLECTION ACTIVITY

104.3 TERMINATION OF COLLECTION ACTIVITY

104.4 TRANSFER OF CLAIMS

104.1 SCOPE AND APPLICATION

The standards set forth in this part apply to the suspension or termination of collection action pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, on claims which do not exceed $20,000 exclusive of interest. The head of an agency or his designee may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

104.2 SUSPENSION OF COLLECTION ACTIVITY

Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim having consideration for its size and the amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and license records; state and local governmental agencies; district directors of Internal Revenue; other Federal agencies; employers, relatives, friends; credit agency skip locate reports and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as Public Law 89-505, 80 Stat. 304, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of his missing status. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is unable to make payments on the Government's claim or effect a compromise thereof at the time but his future prospects justify retention of the claim for periodic review and action and (a) the applicable statute of limitations has been tolled or started running anew or (b) future collection can be effected by offset notwithstanding the statute of limitations.

104.3 TERMINATION OF COLLECTION ACTIVITY

The head of an agency or his designee may terminate collection activity and consider the agency's file on the claim closed under the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings.

(b) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset notwithstanding the bar of the statute of limitations is too remote to justify retention of the claim.

(c) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(e) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

104.4 TRANSFER OF CLAIMS

When an agency has doubt as to whether collection action should be suspended or terminated on a claim it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under section 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

PART 105–REFERRALS TO GAO OR FOR LITIGATION

Sec.

105.1 PROMPT REFERRAL

105.2 CURRENT ADDRESS OF DEBTOR

105.3 CREDIT DATA

105.4 REPORT OF PRIOR COLLECTION ACTIONS

105.5 PRESERVATION OF EVIDENCE

105.6 MINIMUM AMOUNT OF REFERRALS TO THE DEPARTMENT OF JUSTICE

105.7 REFERRALS TO GAO

105.1 PROMPT REFERRAL

Claims on which collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, will be referred to the General Accounting Office in accordance with R.S. 236, as amended, 31 U.S.C. 71, or to the Department of Justice, if the agency concerned has been granted an exception from referrals to the General Accounting Office. Such referrals should be made as early as possible consistent with agressive agency collection action and the observance of the regulations contained in this chapter and in any event well within the time limited for bringing a timely suit against the debtor.

105.2 CURRENT ADDRESS OF DEBTOR

Referrals to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the General Accounting Office, and referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown will be accompanied by a listing of the prior known addresses of such a party and a statement of the steps taken to locate him.

105.3 CREDIT DATA

(a) Claims referred to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Such credit data may take the form of (1) a commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor.

(c) Such credit data may be omitted if (1) a surety bond is available in an amount sufficient to satisfy the claim in full, (2) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy its claim in full, (3) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment, (4) the debtor is in bankruptcy or receivership, or (5) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage.

105.4 REPORT OF PRIOR COLLECTION ACTIONS

A checklist or brief summary of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral to the General Accounting Office or to the Department of Justice. If any of the administrative collection actions enumerated in Part 102 of this chapter have been omitted, the reason for their omission will be given with the referral. The General Accounting Office and the Department of Justice may return or retain claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

105.5 PRESERVATION OF EVIDENCE

Care will be taken to preserve all files, records and exhibits on claims referred or to be referred to the General Accounting Office, or to the Department of Justice for litigation.

105.6 MINIMUM AMOUNT OF REFERRALS TO THE DEPARTMENT OF JUSTICE

Agencies will not refer claims of less than $600, exclusive of interest, for litigation unless (a) referral is important to a significant enforcement policy or (b) the debtor has not only the clear ability to pay the claim but the Government can effectively enforce payment having due regard to the exemptions available to the debtor under State or Federal law and the judicial remedies available to the Government.

105.7 REFERRALS TO GAO

Referrals of claims to the General Accounting Office will be in accordance with instructions, including monetary limitations, contained in the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies.

Chapter XXV

AUTHORITY OF ARMED FORCES PERSONNEL TO PERFORM NOTARIAL ACTS

PART A–OUTLINE OF FEDERAL AND NON-FEDERAL AUTHORITY

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2502 FEDERAL AUTHORITY TO ADMINISTER OATHS, AND THE LEGAL EFFECTIVENESS OF SUCH OATHS

- a. Federal authority to administer oaths
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2503 FEDERAL AUTHORITY TO PERFORM OTHER NOTARIAL ACTS, AND THE LEGAL EFFECTIVENESS OF SUCH ACTS

- a. Federal authority
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2510 SPECIAL INSTRUCTIONS FOR ACKNOWLEDGMENTS AND SWORN INSTRUMENTS (SUMMARY OF STATE LAWS)

PART A–OUTLINE OF FEDERAL AND NON-FEDERAL AUTHORITY

2501 SCOPE

This chapter contains a compilation of existing laws and regulations concerning the authority of the military members of the Armed Forces to administer oaths; to take affidavits, sworn statements, or depositions, to make acknowledgments; and to perform other notarial acts.

2502 FEDERAL AUTHORITY TO ADMINISTER OATHS, AND THE LEGAL EFFECTIVENESS OF SUCH OATHS

a. *Federal authority to administer oaths*

(1) The following United States Armed Force members on active duty may administer oaths for purposes of military administration, including military justice (article 136, UCMJ; 10 USC 936):

(a) All judge advocates of the Army, Navy, Air Force, and Marine Corps.

(b) All law specialists (United States Coast Guard).

(c) All summary courts-martial.

(d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(e) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(f) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(g) All other persons designated by regulations of the Armed Forces or by statute.

(2) The following United States Armed Forces members on active duty may administer oaths to any person when it is necessary in the performance of their duties (article 136, UCMJ; 10 USC 936):

(a) President, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(b) President and counsel for the court of any court of inquiry.

(c) All officers designated to take a deposition.

(d) All persons designated to conduct an investigation.

(e) All recruiting officers.

(f) All other persons designated by regulations of the Armed Forces or by statute.

(3) Pursuant to the authority under Article 136(a)(7) of the UCMJ to extend notarial powers by department regulations, the following officers of the Navy and the Marine Corps on active duty, including retired and reserve officers, are so authorized:

(a) Officers certified by the Judge Advocate General of the Navy under Article 26 or Article 27 of the UCMJ.

(b) Officers of the grade of lieutenant commander or major and above.

(c) Executive officers of the Navy and the Marine Corps.

(d) Administrative officers of Marine Corps aviation squadrons.

(e) Officers of the Marine Corps with the Military Occupational Speciality (MOS) of 4430, while assigned as legal administrative officers.

(4) Pursuant to the authority under Article 136(b)(6) of the UCMJ to extend notarial powers by departmental regulations, the following persons of the Navy and Marine Corps on active duty, including retired and reserve officers, are so authorized:

(a) Officers designated as Casualty Assistance Calls Program Officers while so acting.

(b) All persons empowered to authorize a search, for any purpose relating to such search authorization.

(5) Any United States Armed Force commissioned officer of any Regular or Reserve component, whether or not on active duty, may administer:

(a) Oath of enlistment (10 USC 502 and 1031).

(b) Oath required for appointment of any commissioned or warrant officer grade (10 USC 1031).

(c) Any other oath required by law in connection with enlistment or appointment of any person in any United States Armed Force (10 USC 1031).

b. *Legal effectiveness.* Oaths administered under these authorities are proper and legally effective for the purposes stated.

2503 FEDERAL AUTHORITY TO PERFORM OTHER NOTARIAL ACTS, AND THE LEGAL EFFECTIVENESS OF SUCH ACTS

a. *Federal authority.* In addition to administering oaths for the purposes described in 2502a above, United States Armed Force members listed in 2502a(1) have general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by members of any of the Armed Forces, wherever they may be, by persons serving with, employed by, or accompanying the Armed Forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to the UCMJ outside the United States.

b. *Legal effectiveness for Federal purposes.* Federal notarial acts performed under this authority are proper and legally effective for matters wholly connected with military administration, and are generally considered to be legally effective for all other Federal purposes.

c. *Legal effectiveness for non-Federal purposes.* The legal effectiveness of any notarial act generally is dependent on the laws of the jurisdiction in which the instrument is to be used or presented. This jurisdiction determines who may perform notarial acts, and the conditions under which they may be performed. Federal authority contained in Article 136, UCMJ (10 USC 936) for the performance of notarial acts by certain United States Armed Force members may or may not be accepted as adequate compliance with the requirements of the jurisdiction in which the instrument is to be used or presented.

d. *Formats.* For most Federal purposes the formats for acknowledgments and sworn instruments should be as set forth in Appendix A-25-a and A-25-b respectively.

2504 NON-FEDERAL AUTHORITY TO PERFORM NOTARIAL ACTS, AND THE LEGAL EFFECTIVENESS OF SUCH ACTS

a. *Non-Federal authority.* Laws of almost all States, the District of Columbia, and United States possessions, territories, and commonwealths authorize certain United States Armed Force members to perform one or more of the following notarial acts for United States Armed Force members, their dependents, and accompanying civilians:

(1) Administer oaths.

(2) Take affidavits.

(3) Take sworn statements.

(4) Take depositions.

(5) Take acknowledgments.

b. *Determinations.* Before exercising notarial authority, United States Armed Force members should determine:

(1) The State or States where the instrument is to be used or presented.

(2) Who has authority to perform the particular notarial function (consult the listing in section 2510).

(3) For whom the particular notarial act may be performed under the laws of the jurisdiction or jurisdictions involved (consult the listing in section 2510).

c. *Legal effectiveness.* This must be tested by the statutory requirements of the State or States in which the instrument is to be used. When a single instrument requiring acknowledgment is to be used in more than one jurisdiction, the acknowledgment must comply with the laws of every jurisdiction in which it is to be used. Although notarial functions performed by United States Armed Force members are valid when authorized by the jurisdiction in which the instrument is to be used, it is advisable in the United States to use a locally appointed notary public with seal and when abroad to use a United States consul.

2505 UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT

Several states have recently enacted section 39-1A-1 of the Uniform Recognition of Acknowledgments Act. In many instances the enactment of section 39-1A-1 has not been accompanied by repeal or revision of existing statutory laws governing the power to perform notarial acts outside the state, resulting in some overlapping authorization to perform such acts. Reference is made in the alphabetical listing of states contained in section 2510 to those jurisdictions which have enacted section 39-1A-1, as well as specifying any additional statutes, granting similar powers, which are still operative. Section 39-1A-1 provides as follows:

> § 39-1A-1. "Notarial acts" defined; who may perform notarial acts outside State for use in State.
>
> For the purposes of this article, "notarial acts" means acts which the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.
>
> Notarial acts may be performed outside this State for use in this State with the same effect as if performed by a notary public of this State by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by laws and regulations of this State:
>
> (1) A notary public authorized to perform notarial acts in the place in which the act is performed;
>
> (2) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;
>
> (3) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;
>
> (4) A commissioned officer in active service with the Armed Forces of the United States and any other person authorized by regulation of the Armed Forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the Armed Forces of the United States or any other person serving with or accompanying the Armed Forces of the United States; or
>
> (5) Any other person authorized to perform notarial acts in the place in which the act is performed. (1971, c.1.)

PART B–NON-FEDERAL STATUTES

2506 INTRODUCTION

This part explains who is authorized to execute notarial acts, for whom, and how they may be accomplished for use in each state, the District of Columbia, and United States possessions, territories, and commonwealths. United States Armed Force members should use the formats contained in Appendix A-25-a to avoid the ineffective execution of legal instruments. When available, a legal assistance officer should be consulted. Any instruction from a civilian attorney who prepares and forwards an instrument for execution should be followed carefully.

2507 GENERAL INSTRUCTIONS FOR ACKNOWLEDGMENTS AND SWORN INSTRUMENTS

a. *Seal of person executing document.* Some state statutes require that instruments conveying real or personal property be executed under seal. Therefore, it is recommended that, immediately preceding the signature of the person selling property or appointing an attorney in fact to do so, there be inserted the statement "Witness my hand and seal," or words to that effect. In most jurisdictions, the typing, printing, or writing of the word "(SEAL)" or the symbol

"(LS)" after the signature will complete the sealing of the instrument.

b. *Witnesses.* All instruments which may affect title to real estate must be acknowledged, and since some states also require witnesses, they should also be witnessed by three persons (see Appendix A-25-a). The name, grade or rate, branch of service, Armed Force service number, and permanent home address of each witness should be typed or printed below his signature.

c. *By whom acknowledgments or sworn instruments may be taken.* The majority of state statutes authorize any commissioned officer with the grade of ensign (or second lieutenant) or higher to take acknowledgments and sworn instruments. Therefore, in the alphabetical listing of states contained in section 2510, the words "commissioned officer" are used to denote officers of the grade of ensign, second lieutenant, or higher. Where these statutes require that the commissioned officer have a higher grade, or where they permit commissioned, non-commissioned, or petty officers of a lower grade or rate, to perform these acts, or where they restrict the authority to officers to perform certain functions, such facts are stated under the alphabetical listing of states in section 2510.

d. *When, where, and for whom acknowledgments and sworn instruments may be taken.* Non-federal statutes vary to such an extent that it is necessary to consult the alphabetical listing of states contained in section 2510 to determine when, where, and for whom acknowledgments and sworn instruments may be taken.

e. *Seal of officer taking acknowledgments or sworn instruments.* Under provisions of article 136, UCMJ (10 USC 936), and of all state statutes, the signature of the officer taking an acknowledgment or sworn instrument is *prima facie* evidence of his authority, and an impressed or raised seal is not required, but see section 2507 concerning the signature of the person executing the document.

f. *Manner of administering oaths and taking acknowledgments.* A person taking an acknowledgment or a sworn instrument should take the acknowledgment or administer the oath in person and in the presence of the person whose acknowledgment or oath is being taken. The foregoing is mandatory since both civil and criminal penalties may attach to performing these acts *in absentia.*

2508 ACKNOWLEDGMENTS

An acknowledgment, as used in this chapter, includes the certificate or written evidence of the act of acknowledgment made by the officer, as well as the act itself. Technically, it is a formal declaration or admission before a properly authorized official by a person who has executed an instrument that such instrument is his act or deed.

The purpose of acknowledgments generally is to entitle the instrument to be recorded or to authorize its introduction in evidence without further proof of its execution.

Acknowledgments relate primarily to written instruments affecting land. Statutes require that deeds, mortgages, leases (particularly those over a certain length of years), powers of attorney to convey land or an interest therein, etc., be acknowledged. (The format for acknowledgments is contained in Appendix A-25-a).

2509 SWORN INSTRUMENTS

The term "sworn instruments," as used in this chapter means written declarations signed by a person who declared under oath before a properly authorized official that the facts set forth therein are true to the best of his knowledge and belief. They include affidavits, sworn statements, and depositions. They are comprised of three distinct parts:

(1) Statement of *Venue* (place where notarial act is performed).

(2) *Body* of instrument.

(3) *Jurat* (Clause stating that instrument was sworn to, subscribed, etc., and the date of such act).

Names of these parts, indicated in the format by underscoring, should not appear in the actual instrument.

The purpose of sworn instruments generally is to make a formal statement under oath of certain facts which are known to the person making such statement. See Appendix A-25-b for a suggested format.

2510 SPECIAL INSTRUCTIONS FOR ACKNOWLEDGMENTS AND SWORN INSTRUMENTS (SUMMARY OF STATE LAWS)

This section contains a summary of the jurisdictional requirements for acknowledgments arranged in alphabetical order. Unless otherwise indicated, the term "commissioned officer" as used in this section means an officer of the grade of ensign or above in the Navy or Coast Guard or an officer of the grade of second lieutenant or above in the Army, Air Force or Marine Corps. Unless otherwise indicated, phrases such as "members of the Armed Forces" do not include spouses or other dependents of such members, nor civilians employed by the Armed Forces.

ALABAMA Code of Ala., Title 47, Sec. 27 (1958).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of any person, military or otherwise, at any place outside of the State of Alabama.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

ALASKA Alask. Stats., Code of Civil Proc., Title 9, Sec. 09.65.010.

The commanding officer of a United States Coast Guard vessel is empowered to administer oaths or affirmations within the State. No other statutory authority exists for commissioned officers to take acknowledgments, oaths or sworn instruments.

ARIZONA Enacted Uniform Recognition of Acknowledgments Act as Ariz. Rev. Stats. Ann., Title 33, Chap. 4, Art. 5, Sections 33-501 to 508 (1971). Former Ariz. Rev. Stats. Ann., Sec. 35-11 (Supp., 1968) is repealed.

ARKANSAS Ark. Stat. Ann., Sec. 49-111 and 40-108 (Supp., 1967).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for persons serving in or with the Armed Forces of the United States or their dependents at any place.

2. *Oaths and Sworn Instruments.* Any person in the Armed Forces may take oath to any affidavit before any commissioned officer of any branch of service.

CALIFORNIA Ann. Cal. Codes, Civil Code, Title 4, Art. 3, Sec. 1183.5 (Supp., 1975).

1. *Acknowledgments.* Any officer on active duty in the Armed Forces having the general powers of a notary public pursuant to 10 U.S.C. Sec. 936–may perform all notarial acts for any person serving in the Armed Forces of the United States, wherever they may be, or for any spouse of a person serving in the Armed Forces wherever they may be, and for any person serving with, employed by, or accompanying such Armed Forces outside the United States and outside the Canal Zone, Puerto Rico, Guam and the Virgin Islands.

2. *Oath and Sworn Instruments.* Requisities same as for acknowledgments.

CANAL ZONE Canal Zone Code, Title 4, Sec. 725.

1. *Acknowledgments.* (a) A commissioned officer of the Army or Air Force on active duty with the JAG's Department, (b) a law specialist in the Navy or Coast Guard, (c) a staff judge advocate, acting staff judge advocate, adjutant, assistant adjutant, personnel adjutant, or commanding officer of a command, (d) a commanding officer or executive officer of a ship, shore station or establishment and any officer of or above the grade of lieutenant senior grade on active duty with the Navy or Coast Guard, or (e) an officer of or above the grade of captain on active duty with the Marine Corps may take acknowledgments at any place of any person serving in or with the Armed Forces of the United States or of the spouse of a member of the Armed Forces.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

COLORADO Colo. Rev. Stat. Ann., Sec. 24-12-104, 38-30-127, and 12-55-203 (1973).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Forces members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) any person who is outside said limits by permission, assignment or direc-

tion of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision is made for spouses or dependents under Sections 24-12-104 and 38-30-127, but paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in Section 12-55-203.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

CONNECTICUT C. G.S.A., Secs. 1-24, 1-38 and 27-137 (1975).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for those serving in or with the United States Armed Forces or their dependents at any place.

2. *Oaths and Sworn Instruments.* The following officers may administer oaths to persons serving with or in the United States Armed Forces or their spouses at any place: Judge advocates of the Army, Navy, Air Force, and Marine Corps; law specialists of the Coast Guard, adjutants, assistant adjutants, acting adjutants, and personnel adjutants, commanding officers, executive officers and officers whose rank is lieutenant commander or major, or above. No provision made for dependents other than spouses.

DELAWARE 25 Del. Code Sec. 130 (1953).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia at any time; and (c) other persons outside the above limits by permission, assignment, or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provisions made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

DISTRICT OF COLUMBIA

No local statutory authority for any United States Armed Force member to take acknowledgments, oaths, or sworn instruments. (See section 2503 above for Federal authority to perform these functions.)

FLORIDA F. S. A., Sec. 92.51 (effective July 1, 1977).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments, both within or without in the United States, for (a) a member of the Armed Forces of the United States, (b) the spouse of such member and (c) a person whose duties require his presence with the Armed Forces of the United States. No provision made for dependents other than spouses of United States Armed Forces members.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

GEORGIA Ga. Code Ann., Title 71, Secs. 401 and 404 (1964).

1. *Acknowledgments:*

a. Section 401 provides that all commissioned officers (without restriction as to grade) are *ex officio* notaries public for the purpose of taking acknowledgments of any person, at any place, concerning Georgia property only.

b. Section 404 provides that commissioned officers in active service may take acknowledgments generally of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) other persons outside said limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments:*

a. Section 401 requisities same as for acknowledgments when oaths and sworn instruments concern Georgia property only.

b. Section 404 requisites same as for acknowledgments.

GUAM Govt. Code, Sec. 22200 (1961).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) on active duty

authorized by UCMJ to administer oaths may take acknowledgments of any person on active duty.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

HAWAII Hawaii Rev. Stat., Sec 502-47 (1968), and Ch. 30, Sec. 30-222 (1971).

1. *Acknowledgments.* Any officer authorized by Congress to exercise the powers of a notary public (see section 2503 above for federal authority to perform these functions) may take acknowledgments of (a) any person in the United States Armed Forces at any place, and (b) any person without the United States.

2. *Oaths and Sworn Instruments.* No local authority granted for officers to take oaths or sworn instruments.

IDAHO Idaho Code, Sec. 55-705 (Supp., 1967).

1. *Acknowledgments.* Any officer (without restrictions as to grade) of any component of any branch of the Armed Forces of the United States as may be designated to take a deposition may take the acknowledgment at any place of persons in any of the Armed Forces or otherwise subject to military law, and their wives and dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

ILLINOIS S. H. A., Ch. 30, Sec. 19 (1969) and Ch. 101, Sec. 2 (Supp., 1968), and Ch. 30, Sec. 30-222 (1971).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments, at any place, for those serving in or with United States Armed Forces and for their spouses or former spouses. No provision made for dependents other than spouses or former spouses under Ch. 30, Section 19 and Ch. 101, Section 2 but paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in Ch. 30, Section 30-222.

2. *Oaths and Sworn Statements.* Commissioned officers in active service may take all oaths or sworn instruments, at any place, from any person whether or not connected with the United States Armed Forces.

INDIANA Burns Ind. Stat. Ann., Title 32-2-3-1 (1975).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for (a) those serving in or with the United States Armed Forces at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) any person who is outside said limits by permission, assignment or direction of any department or office of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

IOWA I.C.A., Sec. 558.26; Rules for Civil Procedure, Rule 153 (1950).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for those serving in or with United States Armed Forces at any place. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Depositions may be taken by any commissioned officer under whose command the person giving the deposition is serving, or by any commissioned officer of the Judge Advocate General Department or Corps. There is no restriction as to the grade of the officer.

KANSAS K. S. A., 58-2216c and d (1964), and 53-301 (1972).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of any person or his spouse or dependents if such person is either (a) a member of the Armed Forces of the United States; (b) a merchant seaman outside the limits of the 50 States and the District of Columbia; or (c) is outside said limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in K. S. A., 53-301.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

KENTUCKY Ky. Rev. Stat. Ann., Sec. 384.080 (1969) and Sec. 465.110 (1971).

1. *Acknowledgments.* Commissioned officers in active service (without restriction as to grade) may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the United States and (c) others outside said limits by permission, assignment or direction of any department or official of the United States Government, at any time. No provision made for spouses or dependents by the terms of the statute itself. Note however, that the Attorney General of Kentucky has stated that the statute also applies to dependents of military personnel and to civilian employees of the Armed Forces and their dependents who are outside the limits of the United States (OAG 63-86). Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted, and are incorporated in Ky. Rev. Stat. Ann., Section 463.110.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledments.

LOUISIANA L.S.A.-R.S., Sec., 35.7 (West 1964).

1. *Acknowledgments.* Commissioned officers in active service (without restriction as to grade) may take acknowledgments of persons serving in or with the United States Armed Forces, at any place; acknowledgments authorized for others, including spouses, only outside the United States and the District of Columbia.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NOTE: Sec. 35.11 provides as follows:

"Whenever notaries pass any acts they shall give the marital status of all parties to the act, viz;

If either or any party or parties are men, they shall be described as single, married, or widower. If married or widower, the Christian and family name of the wife shall be given. If either or any party or parties are women, they shall be described as single, married, or widow. If married or widow, their Christian and family name shall be given, adding that she is the wife or widow of the husband's. . .name."

MAINE M.R.S.A., Title 4, Sec. 1011 (1969).

This section incorporates paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act with regard to acknowledgments, oaths and sworn instruments. Previous authority contained in Title 33, section 203 has been repealed.

MARYLAND Ann. Code of Md., Art. 18, Secs. 11 and 15 (1957).

1. *Acknowledgments.* Commissioned officers in active service of the Armed Forces of the United States may take acknowledgments of (a) any persons serving in or with the Armed Forces of the United States, and their spouses or dependents, at any place; (b) any persons serving as merchant seamen outside the 50 States and the District of Columbia; or (c) any persons outside the 50 States and the District of Columbia by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for acknowledgments of spouses or dependents of persons described in "(b)" or "(c)" of this paragraph.

2. *Oaths and Sworn Instruments.* Any commissioned officer in active service of the Armed Forces of the United States may take oaths and sworn instruments for (a) any member of the Armed Forces of the United States; (b) any persons serving as merchant seamen outside the 50 States and the District of Columbia; or (c) any person outside the 50 States and the District of Columbia by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

MASSACHUSETTS Ann. Laws of Mass. Vol. 7A, Ch. 222, Sec. 11 (1955).

1. *Acknowledgments.* Commissioned officers may take acknowledgments of persons serving in or with the Armed Forces of the United States and their dependents at any place. In case of dependents, the officer's certificate must state name and serial number of the person serving in the Armed Forces on whom the person is dependent.

2. *Oaths and Sworn Instruments.* No local authority for any United States Armed Forces member to take oaths or sworn instruments.

MICHIGAN Mich. Stats. Ann., Sec. 27A1440 (Supp. 1969), and Sec. 26.607(1) *et seq.* (1970).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments, at any place for persons serving in or with the Armed Forces of the United States or civilian employees thereof or in each case their spouses and dependents. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Mich. Stats. Ann., Sec. 26.607(1) *et seq.*

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments, except that here Section 27A1440 uses the word "dependents" instead of the words "spouses and dependents"which occur in the portion relating to acknowledgments.

NOTE: The oath prescribed is more extensive than the jurat example contained in Appendix A-25- b. It is more in the nature of a verification and should therefore contain the following: "made oath that he or she knows the contents thereof and the same is true of his own knowledge except as to matter stated therein to be on information and belief, and as to those matters he or she believes is to be true."

MINNESOTA Min. Stats. Ann., Sec. 358.32 (1973).

Section 358.32 enacts the provisions of the Uniform Recognition of Acknowledgments Act. Previous authority contained in Section 358.27 has been repealed.

MISSISSIPPI Miss. Code Ann., Sec. 89-3-5 and 25-33-23 (1972).

1. *Acknowledgments.* Commissioned officers may take acknowledgments of (a) members of the United States Armed Forces or their spouses at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) persons outside said limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

(NOTE: No provision is made for the spouses of persons in (b) and (c).)

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

MISSOURI Mo. Ann. Stat., Sec. 442.160 and 492.070 (Vernon, 1949).

1. *Acknowledgments.* Commissioned officers on active duty may take acknowledgments for United States Armed Force members on active duty; and their spouses when joint or separate acknowledgment to same instrument is required. No local authority granted for any other acknowledgment.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments, except that there is no provision for taking oaths of spouses.

MONTANA Rev. Code Mont. Ann., Sec. 39-106 (1947).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) persons outside the limits of the United States of America by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEBRASKA Rev. Stat. Neb., Sec. 76-227 (1943), and 64-201 (1969).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of any persons, at any place. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Rev. Stat. Neb., Sec. 64-201.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEVADA Nev. Rev. Stat., 111.305 (1967).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for any

person serving in or with the United States Armed Forces, or any person whose duties require his presence with the United States Armed Forces, at any place. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEW HAMPSHIRE N. H. Rev. Stat. Ann., Ch. 456.12 (1968), and 456-A:1 (1969).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of those serving in or with the Armed Forces of the United States or their dependents wherever located. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in N. H. Rev. Stat. Ann. 456-A:1.

2. *Oaths and Sworn Instruments.* The only authority granted for any United States Armed Forces member to take oaths or sworn instruments is contained in N. H. Rev. Stat. Ann. 456-A:1.

NEW JERSEY N.J. Stats. Ann., Sec. 38:23A-1; 46:2B-1, 2, 3, and 46:2C-1, 2, and 5 (1968).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of (a) United States Armed Force members and their spouses at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; (c) a person outside said limits by permission, assignment or direction of any department or official of the United States Government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged, or in time of emergency (after 23 June 1950 and prior to termination of the national emergency proclaimed 16 December 1950). No provision is made for spouses of persons in (b) and (c) above.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEW MEXICO N.M. Stats. Ann., Sec. 43-1-7 (1953).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia; and (c) persons who are outside those limits by permission, assignment or direction of any department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

NEW YORK N.Y. Real Prop. Law, Sec. 300 (McKinney 1968), Sec. 300; CPLR, Sec. 2309 and 4538 (McKinney 1968).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of persons serving in or with the Armed Forces of the United States or of any dependent of any such persons wherever located, or of any person attached to or accompanying the Armed Forces wherever located. No authentication now required.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

(**NOTE**: Where an oath of acknowledgment is by a member of the Armed Forces or by a dependent of such member the serial number of the member must appear.)

NORTH CAROLINA Gen. Stat. of N.C., Sec. 47-2 (1966).

1. *Acknowledgments.* Any warrant officer or other officer of higher rank may take acknowledgments of any persons, at any place.

2. *Oaths and Sworn Instruments.* No local authority granted for any United States Armed Force member to take oaths or sworn instruments.

NORTH DAKOTA N.D. Century Code, Title 47, 19-14.1 (1971).

Section 19-14-1 enacts the provisions of the Uniform Recognition of Acknowledgments Act. Previous authority under sections 19.17 and 19.17.1 has been repealed.

OHIO Ohio Rev. Code Ann., Sec. 147.38 (1969), and 147.51 (1974).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments, at any place, for United States Armed Force members and their dependents, and of persons serving with, employed by or accompanying the Armed Forces outside the United States, and their dependents. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Ohio Rev. Code Ann. Sec. 147.51.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

OKLAHOMA 72 Okl. St. Ann., Secs. 50.1 and 50.2 (1965), and 49 Okl. St. Ann., Secs. 101 and 102 (1969).

1. *Acknowledgments.* Sergeants, petty officers, warrant officers, and officers of higher grade may take acknowledgments of a person engaged in the military service of the United States and of his or her spouse if a joint or separate acknowledgment of the spouse is required. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in 49 Okl. St. Ann. Secs. 101 and 102.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments except that clause concerning spouses under Sections 50.1 and 50.2 is not applicable.

OREGON Ore. Rev. Stat., Secs., 194.410, 194.420, and 194.430 (1963).

1. *Acknowledgments.* Commissioned officers in active service (without restriction as to grade) may take acknowledgments of the persons who fall in one of the categories a-e below and are serving outside the boundaries of any of the 50 States and D.C.:

a. a member of the Army, Navy, Air Force, Marine Corps or Coast Guard on active duty;

b. a member of the merchant marine of the United States;

c. a civilian employee of the United States, in whatever category, whether or not subject to Civil Service or Federal administrative Acts, and whether or not paid from funds appropriated by the Congress of the United States;

d. a member of a religious group or welfare agency assisting members of the Armed Forces and officially attached to and serving with the Armed Forces; or

e. the spouse of any individual listed in a-d.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

PENNSYLVANIA 21 P.S., Sec. 291.10a (Supp. 1975); 57 P.S., Sec. 54 b-f (1964).

1. *Acknowledgments.* Commissioned officers in active service, in pay grade 01 or above, may take acknowledgments for persons serving in, or with, the Armed Forces of the United States, or their dependents, wherever located.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments except that there is no provision for dependents aside from the spouse of a member of the Armed Forces of the United States.

PUERTO RICO

No local statutory authority for any United States Armed Force member to take acknowledgments, oaths, or sworn instruments. (See section 2503 for Federal authority to perform these functions.)

RHODE ISLAND Gen. Laws of R.I., Sec. 34-12-5 (Spec. Supp., 1968).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of any person without the limits of the United States, and members of the Armed Forces and their dependents within the United States.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

SOUTH CAROLINA Code of Laws of S.C. (1976), Secs. 26-3 and 30-5.

1. *Acknowledgments.*

a. The Uniform Recognition of Acknowledgments Act has been enacted into law in South Carolina, and it appears in the Code of South Carolina, Sects. 26-3-10 through 26-3-90. Notarial acts, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents, may be performed outside the state for use in the state with the same effect as if performed by a notary public of South Carolina if performed by any commissioned officer in active service with the Armed Forces of the United States or any other person authorized by regulation of the Armed Forces to perform notarial acts if the notarial act is performed for one of the following or his or her dependents: a merchant seaman of the United States, a member of the Armed Forces of the United States or any other person serving with or accompanying the Armed Forces of the United States. The signature, rank or title and serial number, if any, of the person so authorized to perform notarial acts are sufficient proof of the authority of the holder of that rank or title to perform the act.

b. *Form of acknowledgment.*

State of ______________________

County of ______________________

The foregoing instrument was acknowledged before me this (date) by (Name and title of position)

(Signature of person taking acknowledgment)
(Title or Rank)
(Serial Number if any)

2. *Oaths and Sworn Instruments.* Same requisites as for acknowledgments.

3. *Recording.* Before any deed or other instrument in writing can be recorded in South Carolina:

a. The execution thereof shall be first proved by the affidavit of a subscribing witness to such instrument, taken before some officer within the state competent to administer an oath or before a person without the state so authorized, including, in the case of any officer or enlisted man of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty outside the state or any civilian employee of any such organization on active duty outside the Continental United States, any commissioned officer of said Army, Navy, Air Force, Marine Corps, or Coast Guard if such probating officer shall state his rank, branch, and organization;

b. The Uniform Recognition of Acknowledgments Act shall be complied with; or

c. The person executing it shall submit an affidavit subscribed to before a person authorized to perform notarial acts that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated therein.

SOUTH DAKOTA S.D.C.L., Secs. 18-4-6, 18-4-8, 18-3-2, and 18-3-4 (1967).

1. *Acknowledgments.* Commissioned officer in active service in pay grade 01 or above may take acknowledgments of any person serving in or with the Armed Forces of the United States wherever located.

2. *Oaths and Sworn Instruments.* Same requisites as for acknowledgments except that any civilian persons serving with, employed by, or accompanying the Armed Forces must be located outside of the United States.

TENNESSEE Tenn. Code Ann., Title 7, Secs.305-307 (1955).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of United States Armed Force members on active duty, and their spouses if they are accompanying their husbands in such service, at any place.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

TEXAS Vernon's Ann. Civil Stats., Arts. 26, 6602, and 6607 (1955).

1. *Acknowledgments.* Commissioned officers (without restriction as to grade) may take acknowledgments of United States Armed Force members, auxiliaries thereto, or their spouses, at any place.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments but limited to United States Armed Forces members and auxiliaries thereto.

UTAH Utah Code Ann., Title 57-2-4 (1974).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments for those serving in or with United States Armed Forces at any place. No provision made for spouses of dependents.

2. *Oaths and Sworn Instruments.* No local authority granted for any United States Armed Force member to take oaths or sworn instruments.

VERMONT V.S.A., Title 12, Sec. 5855 (1959).

1. *Acknowledgments.* Commissioned officers with the rank of captain in the Army or Air Force, or higher rank, or any officer with equivalent rank in other branches of the United States Armed Forces, may take acknowledgments of any person, at any place.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

VIRGIN ISLANDS 5 V.I.C. 694 and 28 V.I.C. 91 (1957).

1. *Acknowledgments.* Commissioned officers may take acknowledgments for those serving in or with United States Armed Forces at any place. No provision made for spouses or dependents. (See section 2503 for Federal authority to perform these functions.)

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

VIRGINIA Va. Code Sec. 55-114.1, 55-115, and 55-118.1 (1970).

1. *Acknowledgments.* Any commissioned officer of the United States Armed Forces and any commissioned officer of any State National Guard that is federally recognized may take the acknowledgment of United States Armed Force members on active duty and their consorts at any place. Additionally, persons who are authorized to take acknowledgments under Title 10 United States Code, Section 936(a), as that section existed on October 30, 1963, may take acknowledgments of (a) members of the Armed Forces at any place; (b) of persons employed by or accompanying such Armed Forces outside the United States and outside the Canal Zone, Guam, and the Virgin Islands; and (c) of any person subject to the Uniform Code of Military Justice outside the United States. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in Va. Code Sec. 55-118.1.

2. *Oaths and Sworn Instruments.* The only authority granted for any United States Armed Forces member to take oaths or sworn instruments is contained in Va. Code 55-118.1.

WASHINGTON R.C.W.A., 73.20.010 (1962).

1. *Acknowledgments.* Commissioned officers in active service may take acknowledgments of (a) United States Armed Force members at any place; (b) merchant seamen outside the limits of the 50 States and the District of Columbia, at any time; and (c) persons outside said limits by permission, assignment or direction of any Department or official of the United States Government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. No provision made for spouses or dependents.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

WEST VIRGINIA W.Va. Code, Secs. 39-1-4a and 57-5-9 (1966); Sec. 39-1A-1 (1971).

1. *Acknowledgments.* Commissioned officers of any branch of the military service of the United States or auxiliary unit officially connected with such military service (without restriction as to grade) may take acknowledgments at any place of any person who is:

a. in the military service of the United States, including the Women's Army Auxiliary Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, "Spars," Women's Reserve or similar women's auxiliary unit officially connected with the military service of the United States, or

b. the spouse of anyone in the military service of the United States including the said components and auxiliary units.

Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgment Act have been enacted and are incorporated in W.Va. Code Sec. 29-1A-1.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

WISCONSIN W.W.S.A., Secs. 706.065 and 887.01(3) (Supp., 1976).

1. *Acknowledgments.* Commissioned officers (without restriction to grade) in active service may take acknowledgments for persons serving in or with the United States Armed Forces, or their dependents, wherever located. Paragraphs (4) and (5) of the Uniform Recognition of Acknowledgments Act have been enacted and are incorporated in W.W.S.A. Sec. 706.065.

2. *Oaths and Sworn Instruments.* Requisites same as for acknowledgments.

WYOMING Wyo. Stats., Sec. 19-5 (Supp., 1969).

1. *Acknowledgments.* Commissioned officers may take acknowledgments of persons serving in or with the Armed Forces or their dependents wherever located.

2. *Oaths and Sworn Instruments.* No local authority granted for any United States Armed Force member to take oaths or sworn instruments.

APPENDIX SECTION – 1

NONPUNITIVE LETTER OF CAUTION (See section 0101c)

Date ______________________

FOR OFFICIAL USE ONLY

From: Commander Service Force, U. S. Atlantic Fleet
To: Ensign F__________L. R__________, SC, U. S. Navy, _________/3100
Via: (1)
(2)

Subj: Nonpunitive letter of caution

Ref: (a) Report of investigation into discrepancies in the ship's store returns for the first quarter of fiscal year 19____, USS ______________ (________)
(b) MCM par. 128c
(c) JAG Manual sec. 0101c

1. Reference (a) is the record of an investigation convened by ____________ to inquire into certain discrepancies in the ship's store returns for the first quarter in fiscal year 19____ in USS _______________.

2. [Here insert a precise statement of the relevant events and circumstances for which the letter of caution is issued.] From the foregoing, it is apparent that you performed your duties in a careless manner. Such carelessness contributed to the improper operation of the ship's store in USS __________. Accordingly, you are hereby administratively cautioned pursuant to references (b) and (c).

3. This letter, being nonpunitive, is addressed to you as a corrective measure. It does not become a part of your official record. You are advised, however, that in the future you will be expected to exercise greater care in the performance of your duties in order to measure up to the high standard of performance of duty required of all officers in the Service Force. Commander Service Force, U. S. Atlantic Fleet, trusts that the instructional benefit which you will receive from this experience will cause you to become a more proficient naval officer.

[Signature]

FOR OFFICIAL USE ONLY

PUNITIVE LETTER OF REPRIMAND (See section 0102)

Date ______________________

FOR OFFICIAL USE ONLY

From: Commander Cruiser-Destroyer Force, U. S. Atlantic Fleet
To: Lieutenant J_______ T. V_______, U. S. Navy, __________/1100
Via: (1)
(2)

Subj: Letter of reprimand

Ref: (a) Report of investigation of collision between USS _______ (______), and SS _________ which occurred on _____ April 19____
(b) UCMJ art. 15
(c) MCM par. 131c(1)
(d) JAG Manual sec. 0102

1. Reference (a) is the record of an investigation convened by Commander Cruiser-Destroyer Force, U. S. Atlantic Fleet, to inquire into the collision between USS ______ (______) and SS ________ on ____ April 19____. The collision occurred in the Atlantic Ocean about 60 miles east of Norfolk, Virginia. You were a party to the investigation and were accorded your rights as such. [As applicable, except in the case of a member attached to or embarked in a vessel, add: You have been advised that you have the right to demand trial by court-martial in lieu of nonjudicial punishment and you have not demanded such trial.]

2. [Here insert a precise statement of all relevant events and circumstances of the offense or offenses in violation of an article or articles of the Uniform Code of Military Justice for which the letter of reprimand is issued.]

3. Your actions clearly show that you were derelict in the performance of your duties as Officer of the Deck, USS ___________, on the morning of _____ April 19____ in that you negligently failed to:

a. Maintain USS ____________, on a safe course as required by U. S. Navy Regulations.

b. Employ all means and devices available to you for detecting and avoiding danger from collision as required by USS _____________ Standing Night Orders and U. S. Navy Regulations.

FOR OFFICIAL USE ONLY

PUNITIVE LETTER OF REPRIMAND (continued)

FOR OFFICIAL USE ONLY

c. Inform your commanding officer when you made a course and speed change at about six minutes before the collision as required by U. S. Navy Regulations.

4. Pursuant to references (b), (c), and (d) you are hereby reprimanded for your negligence in the performance of duty as set forth above.

[Here insert final paragraphs prescribed by 0102e(4)]

[Signature]

FOR OFFICIAL USE ONLY

PUNITIVE LETTER OF ADMONITION (See section 0102)

Date ______________________

FOR OFFICIAL USE ONLY

From: Commander Naval Air Force, U. S. Atlantic Fleet
To: Ensign B________L. N________, U. S. Naval Reserve, ________/1105
Via: (1)
(2)
(3)

Subj: Letter of admonition

Ref: (a) Report of investigation to inquire into the loss of a classified publication which occurred on ____ June 19____
(b) Record of impartial hearing held in USS ____________(______) on ______ June 19____
(c) MCM par. 133b
(d) UCMJ art. 15
(e) MCM par. 131c(1)
(f) JAG Manual sec. 0102

1. Reference (a) is the record of an investigation convened by ______________ to inquire into the loss of a classified publication which occurred on _____ June 19____. Although you were not designated a party to the investigation, you were accorded your rights in the impartial hearing, recorded in reference (b), which was conducted in accordance with reference (c). [As applicable, except in the case of a member attached to or embarked in a vessel, add: You have been advised that you have the right to demand trial by court-martial in lieu of nonjudicial punishment and you have not demanded such trial.]

2. [Here insert a precise statement of all relevant events and circumstances of the offense or offenses in violation of an article or articles of the Uniform Code of Military Justice for which the letter of admonition is issued.]

3. Under these circumstances it is considered that you were derelict in the performance of your duties in that you failed to:

a. Prepare a destruction report for nonregistered, noncryptographic publications in advance of destruction.

b. Use a check-off list for the nonregistered publications at the point of destruction.

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

c. Segregate superseded material from effective publications during stowage.

4. Pursuant to references (d), (e), and (f), you are hereby admonished for your derelictions in the performance of duty as custodian of the RPS-distributed publications in USS _______________ (________) as set forth in the preceding paragraph.

[Here insert final paragraphs prescribed in 0102e(4)]

[Signature]

FOR OFFICIAL USE ONLY

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE RELATING TO THE INVESTIGATION AND PROSECUTION OF CRIMES OVER WHICH THE TWO DEPARTMENTS HAVE CONCURRENT JURISDICTION (1955)

Whereas, certain crimes committed by individuals subject to the Uniform Code of Military Justice may be prosecuted by military tribunals under that Code or by civilian authorities in the Federal Courts; and

Whereas, it is recognized that although the administration and discipline of the armed services require that certain types of crimes committed by their personnel be investigated by those services and prosecuted before military tribunals other types of crimes committed by military personnel should be investigated by civil authorities and prosecuted before civil tribunals; and

Whereas, it is recognized that it is not feasible to impose inflexible rules to determine the respective responsibility of the civilian and military authorities as to each crime over which they may have concurrent jurisdiction and that informal arrangements and agreements may be necessary with respect to specific crimes or investigations; and

Whereas, agreement between the Department of Justice and the Department of Defense as to the general areas in which they will investigate and prosecute crimes to which both civil and military jurisdiction attach will, nevertheless, tend to make the investigation and prosecution of crimes more expeditious and efficient and give appropriate effect to the policies of civil government and the requirements of the armed forces:

It is hereby agreed and understood between the Department of Justice and the Department of Defense as follows:

1. Crimes committed on military installations. Except as hereinafter indicated, all crimes committed on a military installation by individuals subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the military department concerned if such department makes a determination that there is a reasonable likelihood that only individuals subject to the Uniform Code of Military Justice are involved in such crime as principals or accessories, and, except in extraordinary cases, that there is no victim other than persons who are subject to the Uniform Code of Military Justice or who are bona fide dependents or members of a household of military or civilian personnel residing on the installation. Unless such a determination is made, the military department concerned shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation if such crime is within the investigative authority of the FBI. The FBI shall investigate any serious crime of which it has been so advised for the purpose of prosecution in the civil courts unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by the military department concerned. Even if the determination provided for in the first sentence of this paragraph is made by the military department concerned, it shall promptly advise the FBI of any crime committed on a military installation in which there is a victim who is not subject to the Uniform Code of Military Justice or a bona fide dependent or member of the household of military or civilian personnel residing on the installation and that such

department is investigating the crime because it has been determined to be extraordinary. The military department concerned shall promptly advise the Federal Bureau of Investigation whenever the crime, except in minor offenses, involves fraud against the government, misappropriation, robbery, or theft of government property or funds, or is of a similar nature. All such crimes shall be investigated by the military department concerned unless it receives prompt advice that the Department of Justice has determined that the crime should be investigated by the FBI and that the FBI will undertake the investigation for the purpose of prosecution in the civil courts.

2. Crimes committed outside of military installations. Except as hereinafter indicated, all crimes committed outside of military installations, which fall within the investigative jurisdiction of the FBI and in which there is involved as a suspect an individual subject to the Uniform Code of Military Justice, shall be investigated by the FBI for the purpose of prosecution in civil courts, unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by other authorities. All such crimes which come first to the attention of military authorities shall be referred promptly by them to the FBI, unless relieved of this requirement by the FBI as to particular types or classes of crimes. However, whenever military personnel are engaged in scheduled military activities outside of military installations such as organized maneuvers or organized movement, the provisions of paragraph 1 above shall apply, unless persons not subject to the Uniform Code of Military Justice are involved as principals, accessories or victims.

If, however, there is involved as a suspect or as an accused in any crime committed outside of a military installation and falling within the investigative authority of the FBI an individual who is subject to the Uniform Code of Military Justice and if the military authorities believe that the crime involves special factors relating to the administration and discipline of the armed forces which would justify investigation by them for the purpose of prosecution before a military tribunal, they shall promptly advise the FBI of the crime and indicate their views on the matter. Investigation of such a crime may be undertaken by the military authorities if the Department of Justice agrees.

3. Transfer of investigative authority. An investigative body which has initiated an investigation pursuant to paragraphs 1 and 2 hereof shall have exclusive investigative authority and may proceed therewith to prosecution. If, however, any investigative body comes to the view that effectuation of those paragraphs requires the transfer of investigative authority over a crime, investigation of which has already been initiated by that or by any investigative body, it shall promptly advise the other interested investigative body of its views. By agreement between the Departments of Justice and Defense, investigative authority may then be transferred.

4. Administrative action. Exercise of exclusive investigative authority by the FBI pursuant to this agreement shall not preclude the military authorities from making inquiries for the purpose of administrative action related to the crime being investigated. The FBI will make the results of its investigations available to the military authorities for use in connection with such action.

Whenever possible, decisions with respect to the application in particular cases of the provisions of this Memorandum of Understanding will be made at the local level, that is, between the Special Agent in Charge of the local office of the Federal Bureau of Investigation and the local military commander.

5. Surrender of suspects. To the extent of the legal authority conferred upon them, the Department of Justice and the military authorities will each deliver to the other promptly suspects and accused individuals if authority to investigate the crimes in which such accused individuals and suspects are involved is lodged in the other by paragraphs 1 and 2 hereof.

Nothing in this memorandum shall prevent a military department from prompt arrest and detention of any person subject to the Uniform Code of Military Justice whenever there is knowledge or reasonable basis to believe that such a person has committed an offense in violation of such Code and detaining such person until he is delivered to the Federal Bureau of Investigation if such action is required pursuant to this memorandum.

6. Exception. This agreement shall not affect investigative authority now fixed by the Delimitations Agreement between the FBI, Office of Naval Intelligence, Intelligence Division of the Army and the Office of Special Investigations, Inspector General, United States Air Force.

ORDER TO TESTIFY (See Section 0112e)

IN THE MATTER OF)
)
) ORDER TO TESTIFY
)
)

____

____

____

To: (Witness to whom order is directed)

1. As an officer empowered to convene general courts-martial and pursuant to the provisions of sections 6002 and 6004, title 18, United States Code, I hereby make the following findings:

a. That (Name of witness) possesses information relevant to the pending trial by general court-martial of __________________________, and that the presentation of his testimony at this trial is necessary to the public interest; and

b. That it is likely that (Name of witness) would refuse to testify on the basis of his privilege against self-incrimination if subpoenaed to appear as a witness.

2. On the basis of these facts, and pursuant to section 6004 of title 18, United States Code, I hereby order (Name of witness) to appear and testify before the general court-martial convened for the trial of _______________. In accordance with section 6002 of title 18, no testimony or other information given by (Name of witness) (or any information directly or indirectly derived from such testimony or other information) can be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

3. This order is issued with the approval of the Attorney General of the United States set forth in Enclosure 1 annexed hereto.

____
Signature

____
Grade, Title

GRANT OF IMMUNITY (see section 0112h)

IN THE MATTER OF)
)
) GRANT OF IMMUNITY
)
)

____

__________ ________________

To: (Witness to whom immunity is to be granted)

1. It appears that you are a material witness for the Government in the matter of [if charges have been preferred, set forth a full identification of the accused and the substance of all specifications preferred.]

2. In consideration of your testimony as a witness for the Government in the foregoing matter, you are hereby granted immunity from prosecution for any offense or offenses arising out of the matters therein involved concerning which you may be required to testify under oath.

3. It is understood that this grant of immunity from prosecution is effective only upon the condition that you actually testify as a witness for the Government. It is further understood that this grant of immunity from prosecution extends only to the offense or offenses in which you were implicated in the matter herein set forth and concerning which you testify under oath.

____
Signature

____
Grade, title

GRANT OF IMMUNITY (see section 0112h)

IN THE MATTER OF)
)
) GRANT OF IMMUNITY
)
)

____

____

To: (Witness to whom immunity is to be granted)

1. It appears that you are a material witness for the Government in the matter of /if charges have been preferred, set forth a full identification of the accused and the substance of all specifications preferred./

2. In consideration of your testimony as a witness for the Government in the foregoing matter, you are hereby granted immunity from the use of your testimony or other information given by you (or any information directly or indirectly derived from such testimony or other information) against you in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with an order to testify in this matter.

3. It is understood that this grant of immunity from the use of your testimony or other information given by you (or other information directly or indirectly derived from such testimony or other information) against you in any criminal case is effective only upon the condition that you testify under oath as a witness for the Government.

____
Signature

____
Grade, title

MEMORANDUM OF PRETRIAL AGREEMENT-GENERAL COURTS-MARTIAL (See section 0114b(1)(d))

MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES

v.

Place ____________________

Date ____________________

____

____________________	____________________	____________________
Name	Rate/Grade	Serial/Service No.

I, ____________________________, the accused in a general court-martial, do hereby certify:

That, for good consideration and after consultation with my counsel, I do agree to enter a voluntary plea of GUILTY to the charges and specifications listed below, provided the sentence as approved by the convening authority will not exceed the sentence hereinafter indicated by me;

That it is expressly understood that, for the purpose of this agreement, the sentence is considered to be in these parts, namely: the punitive discharge, period of confinement or restraint, amount of forfeiture or fine, and reduction in rate or grade;

That should the court award a sentence which is less, or a part thereof is less, than that set forth and approved in the agreement, then the convening authority, according to law, will only approve the lesser sentence;

That I am satisfied with my defense counsel in all respects and consider him qualified to represent me in this court-martial;

That this offer to plead guilty originated with me and my counsel; that no person or persons whomsoever have made any attempt to force or coerce me into making this offer or pleading guilty;

That my counsel has fully advised me of the meaning and effect of my guilty plea and that I fully understand and comprehend the meaning thereof and all of its attendant effects and consequences, including the possibility that I may be processed for an administrative discharge, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved pursuant to this agreement;

That I understand that I may ask permission to withdraw my plea of guilty at any time before sentence is announced, and that the military judge may, at his discretion, permit me to do so; and

That I understand this offer and agreement and have been advised that it cannot be used against me in the determination of my guilt on any matters arising from the charges and specifications made against me in this court-martial.

That it is expressly understood that the pretrial agreement will become null and void in the event: (1) I fail to plead guilty to each of the charges and specifications set forth below, (2) the court refuses to accept my plea of guilty to any of the charges and specifications set forth below, (3) the court accepts each of my pleas but, prior to the time sentence is announced, I ask permission to withdraw any of my pleas, and the court permits me to do so, and (4) the court initially accepts my plea of guilty to each of the charges and specifications set forth below but, prior to the time the sentence is adjudged, the court sets aside any of my guilty pleas and enters a plea of not guilty on my behalf.

MEMORANDUM OF PRETRIAL AGREEMENT - GENERAL COURTS-MARTIAL (continued)

	CHARGES PREFERRED:		GUILTY PLEA BY ACCUSED TO:	
	Article #	Description	Article #	Description
1.				
2.				
3.				

MAXIMUM SENTENCE TO BE APPROVED BY CONVENING AUTHORITY:

See maximum sentence appendix to memorandum of pretrial agreement.

Signed: ______________________________
Name of accused   Date and Place

Witness: ______________________ [Defense counsel, date and place]

Witness: ______________________ [Name, date and place]

The foregoing agreement is [approved] [disapproved].

____
Signature, grade and title of
convening authority

MAXIMUM SENTENCE APPENDIX TO MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES)   Place:
)   Date:
v.)
) GENERAL COURT-MARTIAL
)
)

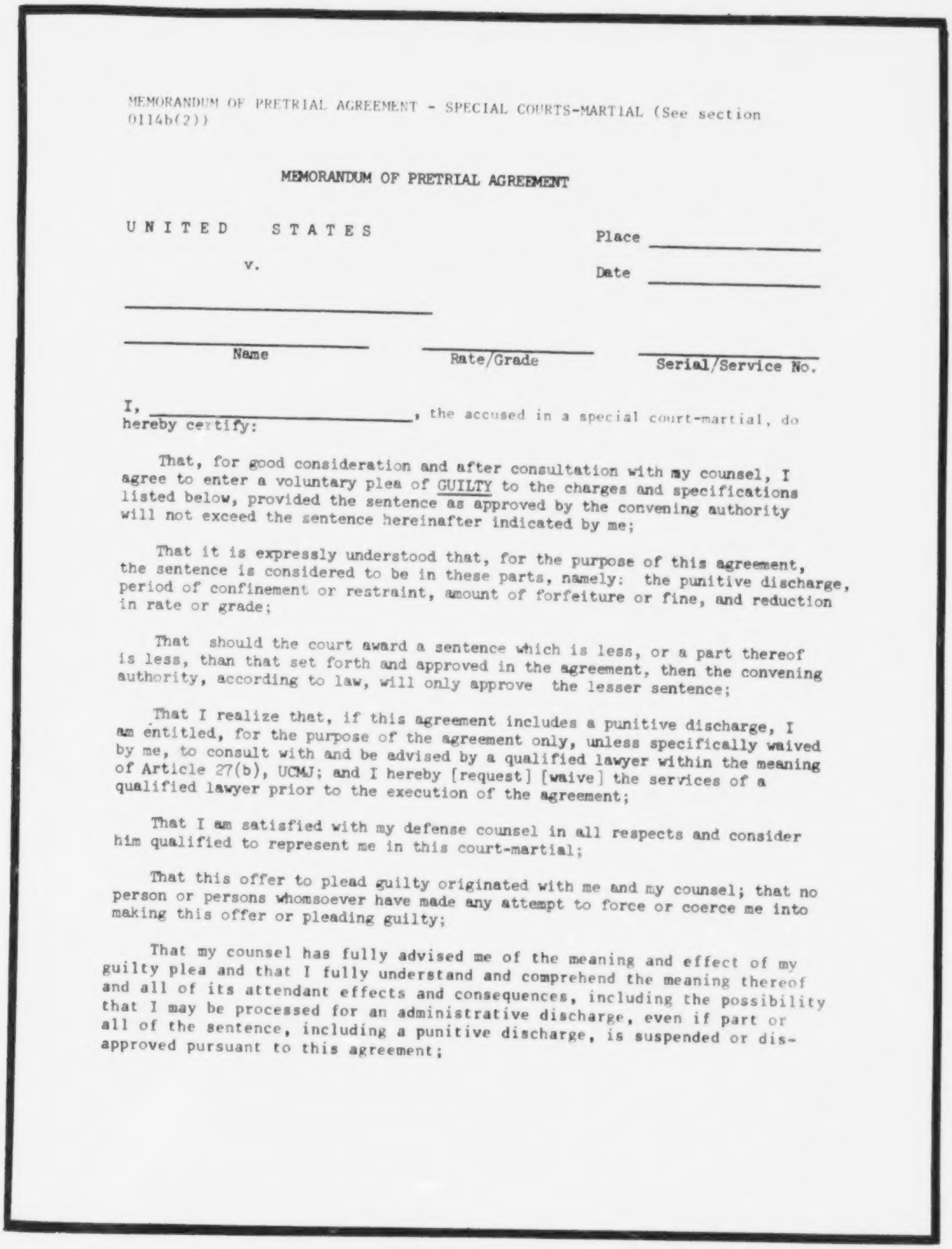
Maximum sentence to be approved by Convening Authority:

1. Punitive Discharge [character of and, if on probation, terms thereof]
2. Confinement or Restraint [amount and kind]
3. Forfeiture or fine [amount and duration]
4. Reduction to [rate or grade]

Signed: ______________________________
Name of accused   Date and place

Witness: ______________________ [Defense counsel; name, date and place]

Witness: ______________________ [Name, date and place]



MEMORANDUM OF PRETRIAL AGREEMENT - SPECIAL COURTS-MARTIAL (See section 0114b(2))

MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES

v.

____

Place ______________

Date ______________

Name	Rate/Grade	Serial/Service No.

I, ______________________, the accused in a special court-martial, do hereby certify:

That, for good consideration and after consultation with my counsel, I agree to enter a voluntary plea of GUILTY to the charges and specifications listed below, provided the sentence as approved by the convening authority will not exceed the sentence hereinafter indicated by me;

That it is expressly understood that, for the purpose of this agreement, the sentence is considered to be in these parts, namely: the punitive discharge, period of confinement or restraint, amount of forfeiture or fine, and reduction in rate or grade;

That should the court award a sentence which is less, or a part thereof is less, than that set forth and approved in the agreement, then the convening authority, according to law, will only approve the lesser sentence;

That I realize that, if this agreement includes a punitive discharge, I am entitled, for the purpose of the agreement only, unless specifically waived by me, to consult with and be advised by a qualified lawyer within the meaning of Article 27(b), UCMJ; and I hereby [request] [waive] the services of a qualified lawyer prior to the execution of the agreement;

That I am satisfied with my defense counsel in all respects and consider him qualified to represent me in this court-martial;

That this offer to plead guilty originated with me and my counsel; that no person or persons whomsoever have made any attempt to force or coerce me into making this offer or pleading guilty;

That my counsel has fully advised me of the meaning and effect of my guilty plea and that I fully understand and comprehend the meaning thereof and all of its attendant effects and consequences, including the possibility that I may be processed for an administrative discharge, even if part or all of the sentence, including a punitive discharge, is suspended or disapproved pursuant to this agreement;

MEMORANDUM OF PRETRIAL AGREEMENT - SPECIAL COURTS-MARTIAL (continued)

That I understand that I may ask permission to withdraw my plea of guilty at any time before sentence is announced, and that the military judge (or, if the court is a special court-marital without military judge, the president of the court) may, at his discretion, permit me to do so; and

That I understand this offer and agreement and have been advised that it cannot be used against me in the determination of my guilt on any matters arising from the charges and specifications made against me in this court-martial.

That it is expressly understood that the pretrial agreement will become null and void in the event: (1) I fail to plead guilty to each of the charges and specifications set forth below, (2) the court refuses to accept my plea of guilty to any of the charges and specifications set forth below, (3) the court accepts each of my pleas but, prior to the time sentence is announced, I ask permission to withdraw any of my pleas, and the court permits me to do so, or (4) the court initially accepts my plea of guilty to each of the charges and specifications set forth below but, prior to the time the sentence is adjudged, the court sets aside any of my guilty pleas and enters a plea of not guilty on my behalf.

	CHARGES PREFERRED		GUILTY PLEA BY ACCUSED TO:	
	Article #	Description	Article #	Description
1.				
2.				
3.				

MAXIMUM SENTENCE TO BE APPROVED BY CONVENING AUTHORITY:

See maximum sentence appendix to memorandum of pretrial agreement.

Signed: ______________________________

Name of accused   Date and place

Witness: ______________________________ [Defense counsel; name, date and place; Statement of qualification where appropriate]

Witness: ______________________________ [Name, date and place; statement of qualification of additional defense counsel, when used]

The foregoing agreement is [approved] [disapproved].

____

Signature, grade and title of convening authority

MEMORANDUM OF PRETRIAL AGREEMENT - SPECIAL COURTS-MARTIAL (continued)

MAXIMUM SENTENCE APPENDIX TO MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES	)		Place:
	)		Date:
v.	)		
	)	SPECIAL COURT-MARTIAL	
	)		
	)		

Maximum sentence to be approved by Convening Authority:

1. Punitive Discharge [character of and, if on probation, terms thereof]
2. Confinement or Restraint [amount and kind]
3. Forfeiture or fine [amount and duration]
4. Reduction to [rate or grade]

Signed: ______________________________
Name of accused Date and place

Witness: ______________________ [Defense counsel; name, date and place]

Witness: ______________________ [Name, date and place]

COURT-MARTIAL DATA
NAVJAG 5813/1 (REV. 11-72)

RCS-JAG-5813-4
NCM NUMBER (1-7)

CONVENING AUTHORITY: CO USS UNSINKABLE

SUPERVISORY AUTHORITY (8-10): Commander Afloat Forces, U.S. Atlantic Fleet

NAME *(Last, First, Middle)* (11-36)	SSN (37-45)	PAY GRADE (46-47)	SERVICE (48)	GCT SCORE (49-51)	AGE (52-53)
DOE, John William	225-00-2976	E-3	☒ NAVY (48.1) ☐ MARINE CORPS (48.2)	65	21

PRETRIAL RESTRAINT IMPOSED (54): ☐ NONE (54.1) ☒ CONFINEMENT (54.2) ☐ RESTRICTION (54.3) ☐ CONFINEMENT AND RESTRICTION (54.4)

MARITAL STATUS (55): ☐ SNGL (55.1) ☐ MARD (55.2) ☐ SEPTD (55.3) ☒ DIVRCD (55.4) ☐ ANULD (55.5) ☐ WIDOWD (55.6)

EDUCATION (56): ☐ LESS THAN HIGH SCHOOL GRADUATE (56.1) ☒ HIGH SCHOOL GRADUATE (56.2) ☐ HIGH SCHOOL GED (56.3) ☐ ATTENDED COLLEGE (56.4) ☐ COLLEGE GRAD (56.5)

CAREER STATUS (57): ☒ VOLUNTEER (57.1) ☐ INDUCTEE (57.2) ☐ ACTIVE DUTY RESERVE UNIT MEMBER (57.3)

SEX (58): ☒ MALE (58.1) ☐ FEMALE (58.2)

GEOGRAPHICAL LOCATION OF TRIAL (59-67)

	IN PORT		ASHORE	
AT SEA (59)	UNITED STATES (60-61)	COUNTRY (62-63)	UNITED STATES (64-65)	COUNTRY (66-67)
☐			VA	

TYPE OF COURT (68): ☐ ART 66 GCM (68.1) ☐ ART 69 GCM (68.2) ☐ ACQUITTAL GCM (68.3) ☒ BCD SPCM (68.4)

TRIAL

OFFENSES (11-66)

		CHARGES – ARTICLES	AFLOAT ORIENTED	NUMBER OF SPECIFICATIONS	C	(LEAVE BLANK) P	U	T	S	O
A	(11-24)	121.0	X	1						
B	(25-38)	134.16	X	5						
C	(39-52)	92.4	X	3						
D	(53-66)	85.0	X	1						

PLEAS – TO EACH CHARGE (67-70) (NOT SPECIFICATION) (ENTER PLEAS TO CHARGES ONLY)

			C
A	(67)	NG	
B	(68)	G	
C	(69)	NG	
D	(70)	G-LIO	

☐ NEGOTIATED PLEA

COURT ACTION

FINDINGS OF COURT (11-14) (ENTER FINDINGS TO CHARGES ONLY)

			C
A	(11)	NG	
B	(12)	G	
C	(13)	G	
D	(14)	G-LIO	

SENTENCE OF COURT (15-21)

☐ DD (15.1) ☒ BCD (15.2) ☒ FORFEITURE (16)

☒ REDUCTION (17) 6 MONTHS CONFINEMENT (18-20) ☐ DEATH (21)

DATE SENTENCE ADJUDGED (22-27): 2 Apr 1973

☒ PREVIOUS CONVICTIONS (28)

CONVENING AUTHORITY ACTION

CA ACTION ON FINDINGS (29-32) (ENTER ACTION ON CHARGES ONLY)

			C
A	(29)		
B	(30)	App'd	
C	(31)	App'd	
D	(32)	App'd-LIO	

CA ACTION ON SENTENCE (33-38)

☐ DD REMITTED (33.1) ☐ DD MODIFIED TO BCD (33.2)

☐ BCD REMITTED (34.1) ☐ BCD SUSPENDED (34.2)

☐ OTHER MODIFYING ACTION (35) 6 MONTHS CONFINEMENT APPROVED (36-38)

SUPERVISORY AUTHORITY ACTION

SA ACTION ON FINDINGS (39-42) (ENTER ACTION ON CHARGES ONLY)

			C
A	(39)		
B	(40)	App'd	
C	(41)	D'sapp'd	
D	(42)	App'd-LIO	

SA ACTION ON SENTENCE (43-47)

☐ BCD SUSPENDED (43)

☒ OTHER MODIFYING ACTION (44)

4 MONTHS CONFINEMENT APPROVED (45-47)

COURT OF MILITARY REVIEW ACTION

USNCMR ACTION ON FINDINGS (48-51)

			C
A	(48)		
B	(49)		
C	(50)		
D	(51)		

USNCMR ACTION ON SENTENCE (52-57)

☐ DD REMITTED (52.1) ☐ DD MODIFIED TO BCD (52.2)

☐ UNSUSPENDED BCD REMITTED (53.1) ☐ SUSPENDED BCD REMITTED (53.2)

☐ OTHER MODIFYING ACTION (54) ______ MONTHS CONFINEMENT APPROVED (55-57)

SIGNATURE (OFFICER SIGNING BY DIRECTION OF OFFICER EXERCISING GCM JURISDICTION)

S/N 0105-100-8134

INSTRUCTIONS

This form will be prepared by all convening authorities and supervisory authorities, as appropriate, during the review of all trials of general courts-martial and all trials of special courts-martial involving bad conduct discharges. In all cases, the convening authority should complete the form through "Convening Authority Action." In special court-martial cases, the supervisory authority should complete the "Supervisory Authority Action." The signature of an officer authorized to sign "By Direction" of the officer exercising general court-martial jurisdiction should be placed in the appropriate space at the bottom of the form. The completed form should be attached under the cover sheet of the original record of trial and forwarded with the record to the Navy Appellate Review Activity, Office of the Judge Advocate General.

CODINGS FOR MACHINE CALCULATIONS. Disregard all numbers in parentheses, the columns headed "C," the space marked "Leave Blank," and the space for the "NCM Number."

PAY GRADE. Enter actual pay grade, i.e., E-1, E-2, O-1, O-2, etc.

PERSONAL DATA. Information as to actual GCT score, age, marital status, education, career status, and sex, may be obtained from the accused's service record.

GEOGRAPHICAL LOCATION OF TRIAL.

A. **AT SEA.** If the trial is held aboard a ship (including embarked units) which is not in port, an "X" should be placed in the "At Sea" box.

B. **IN PORT.** If the trial is held aboard a ship (including embarked units) which is in port in the United States, the two-letter abbreviation for the state should be placed in the space titled "United States." If the trial is held aboard a ship (including embarked units) which is in port in a country other than the United States, the two-letter code for the country should be placed in the space titled "Country." Two-letter state abbreviations and two-letter country codes are listed in the appendix to the JAG Manual following the sample form.

C. **ASHORE.** If the trial is held ashore in the United States, the two-letter abbreviation for the state should be placed in the space titled "United States." If the trial is held ashore in a country other than the United States, the two-letter code for the country should be placed in the space titled "Country." Two-letter state abbreviations and two-letter country codes are listed in the appendix to the JAG Manual following the sample form.

TRIAL.

A. **OFFENSES.** The punitive article identification code set forth following the sample form in the appendix to the JAG Manual is to be used in identifying the charges tried. If there are more than four charges, list the four most serious.

B. **AFLOAT ORIENTED.** Place an "X" in this column on the same line as the charge if any specification of the charge is "Afloat Oriented." Examples of "Afloat Oriented" offenses are: (1) Offenses which occur on board ship (including embarked units), (2) Unauthorized absence or desertion from a ship or embarked unit, (3) Missing the movement of a ship or embarked unit, (4) Failure to report for duty to a ship or embarked unit, or to a unit scheduled for embarking.

C. **SPECIFICATIONS.** Indicate the number of specifications for each charge listed.

D. **PLEAS.** Indicate the plea for each charge (not specification) listed. If guilty pleas were the result of a pretrial agreement, place an "X" in the "Negotiated Plea" box. Abbreviations may be used for guilty or not guilty, i.e., "G" and "NG." A guilty plea to a lesser included offense should be indicated by the abbreviation "G-LIO."

FINDINGS OF COURT. Indicate the findings of the court with respect to each charge (not specification) listed. Utilize the abbreviations "G," "NG," and "G-LIO."

ACTION ON FINDINGS BY REVIEWING AUTHORITIES. Indicate "App'd," "Disapp'd," or "App'd-LIO" with respect to each charge (not specification) listed.

SENTENCE OF THE COURT. Place "X's" in the appropriate boxes, and enter the number of months of confinement adjudged. If a life sentence was adjudged, enter "999" for the months of confinement.

PREVIOUS CONVICTIONS. If one or more previous court-martial convictions were considered by the court, place an "X" in the box.

ACTION ON SENTENCE BY CONVENING AUTHORITY. If the sentence as adjudged by the court is approved, make no entries except for months of confinement. Enter the number of months of confinement approved, even if it is the same as that adjudged by the court. If any modifying action is taken on the remainder of the sentence, indicate such action by placing "X's" in the appropriate boxes.

ACTION ON SENTENCE BY SUPERVISORY AUTHORITY. If the sentence as approved by the convening authority is approved, make no entries except for months of confinement. Enter the number of months of confinement approved, even if it is the same as that approved by the convening authority. If any modifying action is taken by the supervisory authority on the remainder of the sentence, indicate such action by placing "X's" in the appropriate boxes.

PUNITIVE ARTICLE IDENTIFICATION CODE

Article	Offense	Code
	Follows Article number of substantive offense:	
78	Accessory (e.g., accessory to robbery - 122.6)	.6
80	Attempt (e.g., attempted rape - 120.7)	.7
81	Conspiracy(e.g., conspiracy to commit larceny - 121.8)	.8
82	Solicitation (e.g., solicit aid to the enemy - 104.9)	.9
M 83	Fraudulent enlistment	83.0
M 84	Unlawful enlistment	84.0
M 85	Desertion - with intent to remain permanently	85.0
	Desertion - to avoid hazardous duty	85.1
	Desertion - to shirk important service	85.2
	Desertion - entering other service	85.3
	Desertion - officer quitting post	85.4
M 86	Unauthorized absence - from unit, etc.	86.0
	Unauthorized absence - fail to go, etc.	86.1
	Unauthorized absence - go from place, etc.	86.2
M 87	Missing movement - through neglect	87.0
	Missing movement - through design	87.1
M 88	Contempt toward officials	88.0
M 89	Disrespect to superior officer	89.0
M 90	Striking, etc., superior officer	90.0
	Willful disobedience lawful order superior officer	90.1
M 91	Striking, etc., warrant officer or petty officer	91.0
	Disobedience lawful order warrant officer or petty officer	91.1
	Contempt toward warrant officer or petty officer	91.2
M 92	Violation lawful general order or regulation	92.0
	Failure to obey lawful general order or regulation	92.1
	Failure to obey any other lawful order	92.2
	Dereliction in performance of duty	92.3
	Drug/marijuana offenses	92.4

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article	Offense	Code
M 93	Cruelty or maltreatment	93.0
M 94	Mutiny	94.0
C 95	Resisting apprehension	95.0
	Breaking arrest	95.1
	Escape from custody	95.2
	Escape from confinement	95.3
M 96	Releasing prisoner without authority	96.0
	Suffering prisoner to escape through neglect	96.1
	Suffering prisoner to escape through design	96.2
M 97	Unlawful detention	97.0
M 98	Unnecessary delay in court-martial case	98.0
	Failure to enforce or comply with rules under UCMJ	98.1
M 99	Misbehavior before enemy	99.0
M 100	Subordinate compelling surrender	100.0
M 101	Improper use of countersign	101.0
M 102	Forcing safeguard	102.0
M 103	Offenses with captured or abandoned property	103.0
	Looting or pillaging	103.1
M 104	Aiding enemy	104.0
M 105	Misconduct as prisoner	105.0
M 106	Espionage	106.0
M 107	Signing false record, etc.	107.0
	False official statement	107.1
M 108	Selling or disposing of military property	108.0
	Losing military property through neglect	108.1
	Damaging, etc., military property	108.2
	Sabotage	108.3

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article	Offense	Code
C 109	Wasting, etc., other property	109.0
M 110	Hazarding, etc., vessel	110.0
	Sabotage	110.1
C 111	Operating vehicle while drunk	111.0
	Operating vehicle reckless manner	111.1
M 112	Drunk on duty	112.0
M 113	Sentinel or lookout drunk	113.0
	Sentinel or lookout asleep	113.1
	Sentinel or lookout leaving post	113.2
C 114	Dueling	114.0
M 115	Malingering	115.0
C 116	Riot	116.0
	Breach of peace	116.1
C 117	Using provoking, etc., words or gestures	117.0
C 118	Murder, premeditated	118.0
	Murder, with intent to kill, etc.	118.1
	Murder, engaged in dangerous act	118.2
	Murder, engaged in commission of felony	118.3
C 119	Manslaughter, voluntary	119.0
	Manslaughter, culpable negligence	119.1
	Manslaughter, engaged unlawful act	119.2
C 120	Rape	120.0
	Unlawful carnal knowledge	120.1
C 121	Larceny value more than $50	121.0
	Larceny value less than $50	121.1
	Wrongful appropriation	121.2
C 122	Robbery	122.0
C 123	Forgery	123.0
	Uttering forged writing	123.1

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article	Offense	Code
C 123a	Making, etc., check without sufficient funds	123.2
C 124	Maiming	124.0
C 125	Sodomy	125.0
C 126	Arson, simple	126.0
	Arson, aggravated	126.1
	Arson, sabotage	126.2
C 127	Extortion	127.0
C 128	Assault, simple	128.0
	Assault consummated by battery	128.1
	Assault with dangerous weapon	128.2
	Assault intentionally inflicting grievous harm	128.3
C 129	Burglary	129.0
C 130	Housebreaking	130.0
C 131	Perjury	131.0
C 132	False statement, etc., on claim, etc.	132.0
	False oath on claim, etc.	132.1
	Forging signature on claim, etc.	132.2
	Other fraud under art. 132	132.3
M 133	Conduct unbecoming officer and gentleman (no breakdown required under art. 133)	133.0
C 134.00	All offenses charged under art. 134 not falling in categories listed below	134.00
C .01	Adultery or fornication	134.01
C .02	Altered ID card, etc.	134.02
C .03	Assault, indecent	134.03
C .04	Assault, intent to commit felony	134.04
M .05	Assault, other under art. 134	134.05
C .06	Bad check offense	134.06
C .07	Bigamy or polygamy	134.07
M .08	Breach of restriction	134.08
C .09	Bribery or graft	134.09
C .10	Carrying concealed weapon	134.10
C .11	Counterfeiting	134.11

"C" denotes civil-type offense
"M" denotes military-type offense

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

Article	Offense	Code
C .12	Destroying, altering, etc., public record	134.12
M .13	Discharging firearm	134.13
M .14	Disloyal statement	134.14
C .15	Disorder, disorderly	134.15
C .16	Drugs or marijuana	134.16
C .17	Drunk	134.17
C .18	Drunk and disorderly	134.18
C .19	Failure to pay debts	134.19
M .20	False pass or permit	134.20
C .21	False swearing	134.31
C .22	Gambling	134.22
M .23	Impersonating officer	134.23
M .24	Improper uniform	134.24
C .25	Indecent act or liberties with child	134.25
C .26	Indecent or lewd act	134.26
C .27	Indecent exposure	134.27
C .28	Indecent language to female	134.28
C .29	Leaving scene of accident	134.29
M .30	Misbehavior as sentry	134.30
C .31	Misprision of felony	134.31
C .32	Negligent homicide	134.32
C .33	Nuisance	134.33
C .34	Obscene letter	134.34
C .35	Offenses involving mail matter	134.35
C .36	Pandering	134.36
M .37	Parole	134.37
C .38	Perjury, statutory or subornation of	134.38
C .39	Receiving stolen property	134.39
C .40	Refusal to testify	134.40
	Sabotage (see 134.50)	
C .41	Sale to or purchase of liquor by minor	134.41
C .42	Smuggling	134.42
M .43	Straggling	134.43
C .44	Threats	134.44
M .45	Unauthorized insignia, etc.	134.45
M .46	Unclean accoutrements, arms, etc.	134.46
C .47	Unlawful entry	134.47
C .48	Usury	134.48
C .49	Wrongful use Government property	134.49
C .50	Sabotage	134.50

"C" denotes civil-type offense
"M" denotes military-type offense

APPELLATE RIGHTS STATEMENT (See section 0121)

From: ____
Accused

To: Judge Advocate General

Subj: Appellate Rights

1. Statement of Understanding. In regard to the review of my trial by ____________ ____________________ court-martial held on ____________________________________ at ____________________________________, I have been advised by my defense counsel of my appellate rights under Article 70, Uniform Code of Military Justice; and paragraph 48k, Manual for Courts-Martial, 1969 (Rev.). I understand that I am entitled to request that appellate defense counsel represent me before the Navy Court of Military Review if the record of my trial is referred to that Court under Article 66 or Article 69 of the Code. Further, that I have 10 days from notice of the action of the [convening (for GCM)] [supervisory (for SPCM)] authority in which to forward a request for representation and that my failure to do so within this time may be regarded as a waiver of my right to appellate counsel. I also understand that I am entitled to provide civilian counsel to represent me before the Court if I so desire, and that I may withdraw my request for appellate counsel at any time.

2. Election Regarding Appellate Representation. [Accused should initial in the blank space preceding statement a or b, as appropriate.]

a. __________ I do not desire to be represented by appellate defense counsel before said Navy Court of Military Review.

b. __________ I do desire to be represented by appellate defense counsel before said Navy Court of Military Review (if my case is referred to it), and herewith request that appellate defense counsel urge in my behalf all substantive errors or other matters which he may discover in the record and accompanying papers. In this regard the errors or matters listed below (if any), are those which my trial defense counsel and I believe may be grounds for relief. [If no specific errors or matters are to be listed, so state. If a listing of errors does not appear below but is attached, or a brief by trial defense counsel will be submitted in lieu of a simple listing of errors, so state.]:

(1) Civilian counsel. The name, full address, and phone number of civilian counsel provided by me to represent me before the Navy Court of Military Review is [if none, so state]:

3. Information. [Where appellate defense counsel has been requested complete the following]: In the event that my appellate defense counsel may desire to contact me if the need arises, and aside from my current military address, I may most probably be reached at or through the following address:

I will forward any change in the above address, until completion of appellate review to the following:

Director, Appellate Defense Division
Navy Appellate Review Activity
Office of the Judge Advocate General
Washington Navy Yard
Washington, DC 20374

____
Signature of the Accused
Date:

Witness:

____
Defense Counsel

Copy to:
Accused

APPELLATE RIGHTS STATEMENT (See section 0121)

From: ____
(Accused)

To: Judge Advocate General

Subj: Appellate Rights Statement

1. I was convicted and sentenced by a ______________________ court-martial on ______________ at ______________________. Pursuant to Article 70, Uniform Code of Military Justice, and paragraph 48*k*, *Manual for Courts-Martial, 1969, (Rev.)*, my defense counsel, ______________________, has advised me of my appellate rights and the review process of the record of my court-martial as follows:

a. The initial review will be made by the convening authority. In conducting this review, the convening authority may not approve any findings of guilty unless he is personally satisfied that each element of the offense or offenses of which I was found guilty is established beyond a reasonable doubt by legal and competent evidence of record. The convening authority is not empowered to reverse a finding of not guilty. Should the convening authority approve findings of guilty with regard to one or more offenses, then the convening authority is required to determine the appropriateness of the sentence adjudged. The convening authority may not approve any sentence unless the convening authority is personally satisfied that it is a legal, adequate, and appropriate punishment in view of all of the circumstances. Under no circumstances may the convening authority increase the severity of the sentence as adjudged. I have been further advised by my defense counsel that it is counsel's responsibility to represent me during the initial review of my court-martial conviction. In this regard, my defense counsel has advised me of my opportunity to request clemency, as well as deferment of any sentence to confinement. My defense counsel has also advised me of counsel's responsibility to become familiar with any issues that should be raised in the course of the appellate review of my conviction, to prepare a brief with regard to those issues if counsel deems such a procedure appropriate, and to examine the staff judge advocate's review for error. If convicted by a special court-martial not convened by an officer exercising general court-martial jurisdiction, I understand that the record of trial will also be reviewed by the supervisory authority. In this regard, I understand that the powers and responsibilities of the supervisory authority are identical to those of of the convening authority, but that the supervisory authority's review is limited to the findings and sentence as approved by the convening authority.

b. If, upon conclusion of the initial review of my court-martial conviction, my sentence includes a punitive discharge or confinement at hard labor for one year or more, I understand that the record of trial will be forwarded for review by the U.S. Navy-Marine Corps Court of Military Review in Washington, D.C. It is understood that the U.S. Navy-Marine Corps Court of Military Review essentially has the same responsibilities and powers as the convening or supervisory authorities, but it too is limited to reviewing the findings and sentence as approved on review below and may not reverse a finding of not guilty, approve findings of guilty previously disapproved, or approve a sentence more severe than that previously approved. In this regard, it is understood that no findings of guilty approved on review below may be affirmed by the U.S. Navy-Marine Corps Court of Military Review unless that court is satisfied that each element of the offense or offenses of which I was convicted is established beyond reasonable doubt by legal and competent evidence of record. It is further understood that if the U.S. Navy-Marine Corps Court of Military Review approves a finding of guilty with regard to one or more offenses, then that court is required to determine the appropriateness of the sentence as approved on review below, and that the court may not affirm a sentence as approved on review below unless the court finds that it is a legal, adequate, and appropriate punishment in view of all the circumstances.

c. If the U.S. Navy-Marine Corps Court of Military Review affirms the findings and sentence, in whole or in part, I understand that I have the right to seek further review of my court-martial conviction before the U.S. Court of Military Appeals. In this regard, I understand that the U.S. Court of Military Appeals is composed of three civilian judges and is located in Washington, D.C. Insofar as further review before the U.S. Court of Military Appeals is concerned, I understand that, whereas the review process described in the preceding paragraphs is automatic, I must request review before the U.S. Court of Military Appeals by filing a petition for grant of review within sixty (60) days from the earlier of the date of being notified of the decision of the U.S. Navy-Marine Corps Court of Military Review; or the date on which my copy of the decision of the U.S. Navy-Marine Corps Court of Military Review, after having been served on my appellate counsel of record, (if any), is deposited in the United States mails for delivery by first-class certified mail to the address provided by me; or, if I fail to provide such an address, to the latest address listed by me in my service record. Furthermore, I understand that a petition for grant of review before the U.S. Court of Military Appeals does not have to be granted by that court. I understand that such a petition is granted only on good cause shown and that whether good cause is shown is determined by the U.S. Court of Military Appeals. I understand that, if the U.S. Court of Military Appeals should grant my petition for review, its review of my case is limited solely to questions of law, and its review will also be limited to those questions of law concerning which review was granted. I understand that the U.S. Court of Military Appeals generally must accept the facts as found at trial or during the prior review of my case and that it has no power to amend the sentence as affirmed by the U.S. Navy-Marine Corps Court of Military Review, except in very limited circumstances.

d. It is my further understanding that should I fail to file a petition for grant of review before the U.S. Court of Military Appeals within sixty (60) days after notification or the date of certified mailing, as appropriate, of the U.S. Navy-Marine Corps Court of Military Review's decision in my case, or should the U.S. Court of Military Appeals deny a petition for grant of review, then the normal appellate review of my case is complete. It is understood that, at this point, all ordinary means of seeking appellate review of my court-martial conviction within the military system will have been exhausted and my conviction will be final. It is understood that, at such time as my conviction becomes final, any unexecuted portions of my sentence may be ordered executed at that time. If my sentence, as finally approved, includes a punitive discharge or dismissal, it is understood that I will be discharged or dismissed in accordance with the approved punishment.

2. In view of the foregoing, and should my court-martial be referred to the Navy-Marine Corps Court of Military Review under Article 66 or Article 69, Uniform Code of Military Justice, I have been informed that I am entitled to representation before the United States Navy-Marine Corps Court of Military Review and the United States Court of Military Appeals by appellate defense counsel who is a lawyer qualified in accordance with Article 27(b) of the Uniform Code of Military Justice, designated by the Judge Advocate General of the Navy, and provided at no expense to me. Although I am entitled to such representation, I understand that I must request such representation. In this regard, I understand that I may, if I wish, waive representation by appellate defense counsel by indicating such desires below. Moreover, I understand that if I waive my right to appellate representation, I am relinquishing many of the traditional benefits associated with the right to counsel, including examination of the record of trial by a qualified appellate advocate whose sole responsibility is the protection of my interests and the preparation of assignments of error and other pleadings which might benefit me. I understand that I have ten (10) days from notice of the action of the convening authority, or if convicted by a special court-martial not convened by an officer exercising general court-martial jurisdiction, from notice of the action of the supervisory authority, in which to forward a request for representation and that my failure to do so within this time may be regarded as a waiver of my right to designated appellate counsel. I also understand that, in addition to or in lieu of my designated appellate defense counsel, I may retain a civilian counsel to represent me before the U.S. Navy-Marine Corps Court of Military Review and the U.S. Court of Military Appeals, but that the services of a civilian counsel would be at my own expense and at no expense to the Government.

3. Having fully discussed the foregoing with my defense counsel:

__________ I do desire to be represented by appellate defense counsel, and I hereby request the Judge Advocate General of the Navy to designate an appellate defense counsel to represent me.

__________ I do *not* desire to be represented by appellate defense counsel. In making this choice I hereby acknowledge that I do so only after being informed by my trial defense counsel, whose signature appears below as witness to this statement, that I am relinquishing many of the traditional benefits associated with my right to counsel.

4. For administrative purposes, the following information is provided:

a. A civilian counsel was/was not retained to represent the accused at trial. If civilian counsel was retained to represent the accused at trial, civilian counsel indicates that civilian counsel's services have/have not been retained insofar as appellate review of the case is concerned. Civilian counsel's name, address, and telephone number are as follows:

____

____

____

____

Telephone: ____ (   ) ____________________

b. The services of an individual military counsel were/were not utilized. Individual military counsel's mailing address and telephone number are as follows:

____

____

____

____

Telephone: ____ (   ) ____________________

c. Detailed defense counsel's address and telephone number are as follows:

____

____

____

____

Telephone: ____ (   ) ____________________

d. Principal trial defense counsel in this case was ______________________________.

e. I understand that in order for my defense counsel or any successor counsel properly to represent me, I must keep counsel informed of my current mailing address. In this regard, the following permanent address and phone number are provided at which I may be contacted:

____

____

____

____

Telephone:______(______)______________________

f. I further agree to forward any change of address to:

Director, Appellate Defense Division
Navy-Marine Corps Appellate Review Activity
Office of the Judge Advocate General
Washington Navy Yard
Washington, D.C. 20374

____________________ (Date)

____________________ (Signature of Accused)

Witnessed by:

____________________ (Signature)

____________________ (Name of Counsel)

NAVJAG 5800/9 (Rev. 11-77) S/N 0106-LF-105-8045

CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS AND COURT-MARTIAL REPORT

RCS JAG 5800-4A

REPORTING GCM AUTHORITY (1-3)	SERVICE (4)	QUARTERLY PERIOD ENDING (5-8)	NEGATIVE REPORTS (9)
Commander, Afloat Forces, Pacific Fleet	☒ NAVY PERSONNEL REPORT (4.1) ☐ MARINE CORPS PERSONNEL REPORT (4.2)	31 Mar 1979	☐ NAVY (9.1) ☒ MARINE CORPS (9.2)

SIGNATURE (Officer signing by direction of officer exercising GCM jurisdiction)

O.K. Barrister O.K. Barrister, LCDR, JAGC, USN

GENERAL INSTRUCTIONS

This report will be prepared and submitted quarterly to the Judge Advocate General by each officer exercising general court-martial jurisdiction (GCM AUTH). Separate reports will be submitted for Navy personnel and for Marine Corps personnel. Reports will be submitted by each GCM AUTH on 25 January, 25 April, 25 July and 25 October of each year.

Negative reports are required. The Negative Marine Corps Report block may be marked on the report submitted for Navy personnel if there are no Marine Corps statistics to be reported, or the Negative Navy Report block may be marked on the report submitted for Marine Corps personnel if there are no Navy statistics to be reported.

Statistics concerning court-martial cases will be obtained from records of trial reviewed by each GCM AUTH. Do not report court-martial cases in which action by the GCM AUTH has not been completed by the end of the reporting period.

Statistics concerning nonjudicial punishments and civil felony convictions will be reported during the period in which the NJP was imposed or the civil conviction occurred. Statistics will be obtained from NAVJAG 5800/9A forms submitted to each GCM AUTH by subordinate activities, and consolidated with any data maintained by the GCM AUTH.

When a GCM AUTH's command is disestablished, that GCM AUTH should report the cases reviewed prior to disestablishment. The GCM AUTH who accepts uncompleted cases from the disestablished command should include those cases (including all processing time) in his own report when review is complete.

When one GCM AUTH sends a case to another GCM AUTH for review because the original GCM AUTH is disqualified from reviewing the case, or for any reason other than disestablishment of the original GCM AUTH's command, the original GCM AUTH should include the case (including all processing time) in his own report when review is complete.

Do not include rehearings in Parts I through X of this form. Statistics as to the original trial should be reported in Parts I through X, but the rehearing should be reported only in Part XI. The original trial will be reported in Parts I through X as an acquittal.

PART I COURT-MARTIAL CASE TOTALS AND GEOGRAPHICAL LOCATIONS

PART IA CASE TOTALS

TYPE OF COURT	GUILTY PLEAS	NEGOTIATED PLEAS	TOTAL CONVICTIONS	TOTAL ACQUITTALS	TOTAL CASES
GENERAL COURTS-MARTIAL	▨	▨	(1.10) 3	(1.16) 1	(1.22) 4
BCD SPECIAL COURTS-MARTIAL	▨	▨	(1.28) 22	▨	(1.34) 22
NON-BCD SPECIAL COURTS-MARTIAL	(1.40) 25	(1.46) 4	(1.52) 34	(1.58) 2	(1.64) 36
SUMMARY COURTS-MARTIAL	(1.70) 138	▨	(2.10) 150	(2.16) 5	(2.22) 155
GRAND TOTAL	▨	▨	(2.28) 209	(2.34) 8	(2.40) 217

PART IA INSTRUCTIONS

A BCD SPCM is a case in which the sentence as approved by the GCM AUTH includes a bad conduct discharge, either suspended or unsuspended. A Non-BCD SPCM is a case in which the sentence as approved by the GCM AUTH does not include a bad conduct discharge, either suspended or unsuspended.

Report in the column headed "Guilty Pleas" those cases where the accused pleaded guilty to ALL charges and specifications, including negotiated plea cases.

The cases reported in the "Negotiated Pleas" column must be included in the cases reported in the "Guilty Pleas" column.

If a trial, after review by the GCM AUTH, resulted in conviction of any offense, it should be reported as a "conviction." If conviction of more than one offense is involved in a particular trial, report only one conviction for that individual's trial.

PART IB

CONVICTIONS BY GEOGRAPHICAL LOCATION

	GENERAL COURTS-MARTIAL						BCD SPECIAL COURTS-MARTIAL					
	CONUS CONVICTIONS			OVERSEAS CONVICTIONS			CONUS CONVICTIONS			OVERSEAS CONVICTIONS		
	STATE	CITY/LOCATION	NUMBER CASES	COUNTRY	CITY/LOCATION	NUMBER CASES	STATE	CITY/LOCATION	NUMBER CASES	COUNTRY	CITY/LOCATION	NUMBER CASES
SPECIFIC LOCATION	CA	SDG	2	US	PLH	1	CA	SDG	6	JA	JOK	3
SPECIFIC LOCATION							CA	SFR	3	RP	SUB	3
SPECIFIC LOCATION							WA	stl	2			
ALL OTHER LOCATIONS									2			1
AT SEA									1			1
TOTAL CASES			2			1			14			8

	NON-BCD SPECIAL COURTS-MARTIAL						SUMMARY COURTS-MARTIAL					
	CONUS CONVICTIONS			OVERSEAS CONVICTIONS			CONUS CONVICTIONS			OVERSEAS CONVICTIONS		
	STATE	CITY/LOCATION	NUMBER CASES	COUNTRY	CITY/LOCATION	NUMBER CASES	STATE	CITY/LOCATION	NUMBER CASES	COUNTRY	CITY/LOCATION	NUMBER CASES
SPECIFIC LOCATION	CA	SDG	9	JA	JOK	2	CA	SDG	35	RP	SUB	10
SPECIFIC LOCATION	CA	SFR	2	RP	SUB	7	CA	SFR	20	RP	CBI	9
SPECIFIC LOCATION	WA	STL	1				WA	STL	4	US	PHL	2
ALL OTHER LOCATIONS			1			1			6			9
AT SEA			5			6			35			20
TOTAL CASES			18			16			100			50

PART IB INSTRUCTIONS

Report cases tried by the geographical locations of the trials. Specific cities/locations which may be used for each state and country, together with codes or abbreviations to be used, are listed in the appendix to the JAG Manual following the sample form. Trials held at locations other than those specified will be reported under "Other." If trials are held at more than three specified locations, report the three specified locations with the largest groups of cases and report the remainder of the cases as "Other."

Instructions for ships and embarked units:

(1) If trial held in port in CONUS or in any other country, follow above general instructions.

(2) If trial not held in port, but held at sea within the 3-mile limit of CONUS, report on the "At Sea" line in the "CONUS" section.

(3) If trial held at sea outside the 3-mile limit of CONUS or if exact location of the ship or unit at the time of trial is not known by the GCM AUTH preparing the statistics report on the "At Sea" line in the "Overseas" section.

The total CONUS convictions plus the total Overseas convictions for each type of trial must match the total convictions for each type of trial in Part IA.

PART II

NONJUDICIAL PUNISHMENTS AND CIVIL CONVICTIONS

		CONUS	OVERSEAS	TOTAL
NONJUDICIAL PUNISHMENT IMPOSED (ART. 15)		2097	916	3013
U.S. FEDERAL AND STATE COURT FELONY CONVICTIONS		2	8	10

PART II INSTRUCTIONS

When an offense is a felony under the law of the jurisdiction in which the accused was convicted, it should be reported as a civil felony conviction.

Geographical Definitions:

CONUS: The 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.

OVERSEAS: All areas other than the 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.

NJPs aboard ship should be reported by the actual geographical location of the ship. NJPs aboard ships not actually within the 3-mile limit of CONUS will be reported in the Overseas column.

If conviction of more than one offense is involved in a particular trial or NJP, report only one conviction for that individual's trial or NJP.

Page 2 of 5

PART III DRUG AND MARIJUANA OFFENSE CONVICTIONS (ARTS. 92.4 AND 134.16, UCMJ)

TYPE	TOTAL NUMBER ACCUSED	TOTAL NUMBER ARTICLES	NUMBER SPECIFICATIONS BY TYPE OF OFFENSE				
			POSSESSION	USE	TRANSFER	SALE	OTHER
GENERAL COURTS-MARTIAL	(10-52) 1	(10-58) 2	(10-64) 1	(10-70)	(11-10)	(11-16) 1	(11-22)
BCD SPECIAL COURTS-MARTIAL	(11-28) 4	(11-34) 5	(11-40) 2	(11-46)	(11-52) 1	(11-58) 2	(11-64)
NON-BCD SPECIAL COURTS-MARTIAL	(11-70) 2	(12-10) 2	(12-16) 1	(12-22) 1	(12-28)	(12-34)	(12-40)
SUMMARY COURTS-MARTIAL	(12-46) 3	(12-52) 4	(12-58) 3	(12-64) 1	(12-70)	(13-10)	(13-16)
NONJUDICIAL PUNISHMENT (ART 15)	(13-22) 18	(13-28) 18	(13-34) 17	(13-40)	(13-46)	(13-52)	(13-58) 1

PART III INSTRUCTIONS

Report only on drug/marijuana offenses. Do not report on other types of offenses which may have been tried at the same time.

The convictions reported under "Total Number Articles" for Non-BCD SPCMs and SCMs must match the total Art. 92.4 & 134.16 convictions reported for each type of trial under Part IV.

PART IV OFFENSES TRIED AND CONVICTED

		MILITARY-TYPE OFFENSES					CIVIL-TYPE OFFENSES					
		ARTICLES				TOTAL	ARTICLES				TOTAL	GRAND TOTAL
		85-86	87	89-90-91-92	OTHER		121	128	92.4 & 134.16	OTHER		
NON-BCD SPCM	TRIED	(14-10) 21	(14-16) 4	(14-22) 3	(14-28) 9	(14-34) 37	(14-40) 2	(14-46) 2	(14-52) 3	(14-58) 5	(14-64) 12	(14-70) 49
	CONVICTED	(15-10) 20	(15-16) 4	(15-22) 2	(15-28) 8	(15-34) 34	(15-40) 1	(15-46) 2	(15-52) 2	(15-58) 4	(15-64) 9	(15-70) 43
	CONV. LIO	(16-10) 1	(16-16)	(16-22)	(16-28)	(16-34) 3	(16-40) 1	(16-46)	▨	(16-52) 1	(16-58) 2	(16-64) 5
SCM	TRIED	(17-10) 112	(17-16)	(17-22) 25	(17-28) 30	(17-34) 167	(17-40) 2	(17-46) 9	(17-52) 4	(17-58) 2	(17-64) 17	(17-70) 184
	CONVICTED	(18-10) 112	(18-16)	(18-22) 20	(18-28) 26	(18-34) 158	(18-40) 2	(18-46) 7	(18-52) 4	(18-58) 2	(18-64) 15	(18-70) 173
	CONV. LIO	(19-10)	(19-16)	(19-22) 1	(19-28) 3	(19-34) 4	(19-40)	(19-46)	▨	(19-52)	(19-58)	(19-64) 4

PART IV INSTRUCTIONS

Report the number of charges (articles), not specifications. Convictions should be as approved by the GCM AUTH.

In "Other" under "Military-Type Offenses," indicate the total of military-type offenses which involve articles other than those reported separately in the preceding columns. In "Other" under "Civil-Type Offenses," indicate the total of civil-type offenses which involve articles other than those reported separately in the preceding columns.

The figures reported in this part concern articles and not cases, and therefore will not match the case totals reported in Part IA.

PART V AFLOAT-ORIENTED OFFENSES

NON-BCD SPECIAL COURTS-MARTIAL			SUMMARY COURTS-MARTIAL		
AFLOAT-ORIENTED ARTICLES TRIED	NON-AFLOAT-ORIENTED ARTICLES TRIED	TOTAL ARTICLES TRIED	AFLOAT-ORIENTED ARTICLES TRIED	NON-AFLOAT-ORIENTED ARTICLES TRIED	TOTAL ARTICLES TRIED
(20-10) 35	(20-16) 14	(20-22) 49	(20-28) 130	(20-34) 54	(20-40) 184

PART V INSTRUCTIONS

If any specification of a charge is "afloat-oriented," the charge (article) should be reported as an "Afloat-Oriented Article Tried." Examples of "afloat-oriented" offenses are: (1) offenses which occur on board ship (including embarked units), (2) unauthorized absence or desertion from a ship or embarked unit, (3) missing the movement of a ship or embarked unit, (4) failure to report for duty to a ship or embarked unit, or to a unit scheduled for embarking.

The total articles tried for each type of trial must match the total articles for each type of trial on the "Tried" line in the "Grand Total" column of Part IV.

PART VI ACTION ON SENTENCES BY CA AND SA

TYPE OF COURT	TOTAL CASES REVIEWED	DISCHARGE ADJUDGED		CONVENING AUTHORITY					SUPERVISORY AUTHORITY		
		DD	BCD	DD REMITTED	BCD REMITTED	DD MODIFIED TO BCD	BCD SUSPENDED	OTHER MODIFYING ACTION	BCD REMITTED	BCD SUSPENDED	OTHER MODIFYING ACTION
GCM	(20-46) 4	(20-52) 1	(20-58) 2	(20-64)	(20-70)	(21-10)	(21-16)	(21-22)	▨	▨	▨
SPCM	(21-28) 58	▨	(21-34) 25	▨	(21-40) 2	▨	(21-46) 4	(21-52) 9	(21-58) 1	(21-64) 2	(21-70) 6
SCM	(22-10) 155	▨	▨	▨	▨	▨	▨	(22-16) 35	▨	▨	(22-22) 20

PART VI INSTRUCTIONS

The "Total Cases Reviewed" must match the total cases reported in Part IA.

PART VII **DISCHARGES FOR DRUG AND MARIJUANA OFFENSES (ARTS 92 4 AND 134 16, UCMJ)**

TYPE OF COURT	PUNITIVE DISCHARGES FOR CONVICTION OF DRUG/MARIJUANA OFFENSES ONLY (ARTS 92 4 AND 134 16, UCMJ)				UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF TRIAL BY COURT-MARTIAL
	ADJUDGED		EXECUTED		
	DD	BCD	DD	BCD	
GENERAL COURTS-MARTIAL	(22 28)	(22 34) 1	(22 40)	(22 46) 2	(22 52) 3
BCD SPECIAL COURTS-MARTIAL		(22 58) 3		(22 64) 5	

PART VII INSTRUCTIONS

Report punitive discharges executed during the reporting period, regardless of where or when the trial was held.

Do not include discharges where conviction of any offenses other than drug/marijuana offenses were involved.

Statistics concerning discharges executed will be obtained from NAVJAG 5800/9A forms submitted to each GCM AUTH by subordinate activities, and consolidated with any data maintained by the GCM AUTH.

The totals reported in this part must be included in the totals reported in Part VIII.

PART VIII **DISCHARGES**

TYPE OF COURT	ADJUDGED								EXECUTED	
	CONUS		OVERSEAS				TOTAL			
	DD	BCD	DD	BCD	DD	BCD	DD	BCD	DD	BCD
GCM	(22 70) 1	(23 10) 1	(23 16)	(23 22) 1	(23 28)	(23 34)	(23 40) 1	(23 46) 2	(23 62)	(23 68) 5
SPCM		(23 64) 17		(23 70) 8		(24 10)		(24 16) 25		(24 22) 14

	NO EXECUTED
UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF TRIAL BY COURT-MARTIAL	(24 28) 14

PART VIII INSTRUCTIONS

Report punitive discharges executed during the reporting period, regardless of where or when the trial was held.

Statistics concerning discharges executed will be obtained from NAVJAG 5800/9A forms submitted to each GCM AUTH by subordinate activities, and consolidated with any data maintained by the GCM AUTH.

The totals reported in this part must include the totals reported in Part VII.

The total discharges adjudged must match the total discharges adjudged which are reported in Part VI.

PART IX **ORGANIZATION OF COURT**

TYPE OF COURT	WITHOUT MEMBERS	WITH MEMBERS			TOTAL CASES REVIEWED
	MILITARY JUDGE ALONE	MILITARY JUDGE WITH MEMBERS	PRESIDENT WITHOUT MILITARY JUDGE	TOTAL WITH MEMBERS	
GENERAL COURTS-MARTIAL	(24 34) 2	(24 40) 2		(24 46) 2	(24 52) 4
BCD SPECIAL COURTS-MARTIAL	(24 58) 18	(24 64) 4		(24 70) 4	(25 10) 22
NON-BCD SPECIAL COURTS-MARTIAL	(25 16) 25	(25 22) 9	(25 28) 2	(25 34) 11	(25 40) 36

PART IX INSTRUCTIONS

The total cases reviewed must match the totals reported in Part IA.

PART X **PROCESSING TIME**

TOTAL CASES REVIEWED GCM 4 BCD SPCM 22 NON-BCD SPCM 36 SCM 155

GROSS PROCESSING TIME CATEGORIES	TOTAL ACTUAL ELAPSED DAYS			
	GCM	SPCM		SCM
		BCD	NON-BCD	
ACCUSED RESTRICTED, ARRESTED, OR CONFINED BY MILITARY AUTHORITY TO CHARGES PREFERRED	40	220	360	1240
CHARGES PREFERRED TO CHARGES RECEIVED BY CONVENING AUTHORITY	4	22	36	155
RECEIPT OF CHARGES BY CONVENING AUTHORITY TO CHARGES REFERRED FOR TRIAL	140	330	540	465
CHARGES REFERRED FOR TRIAL TO SENTENCE OR ACQUITTAL	240	990	1224	465
SENTENCE OR ACQUITTAL TO RECEIPT BY CONVENING AUTHORITY FOR ACTION	60	264	180	310
RECEIPT BY CONVENING AUTHORITY TO CONVENING AUTHORITY ACTION	20	110	180	310
CONVENING AUTHORITY ACTION TO RECEIPT BY GCM AUTH FOR ACTION		154	360	1085
RECEIPT BY GCM AUTH TO GCM AUTH ACTION		154	180	465
TOTAL GROSS PROCESSING TIME	504	2244	3060	4495
DEDUCTIONS				
DAYS OF DELAY REQUESTED BY DEFENSE	108	836	936	620
DAYS ACCUSED SICK OR IN HOSPITAL OR AWOL	48	485	1260	2325
TOTAL DEDUCTIBLE DAYS	156	1320	2196	2945
TOTAL NET PROCESSING TIME	348	924	864	1550

PART X INSTRUCTIONS

The processing times should be reported in actual days, not averages.

Processing times should be obtained from the CHRONOLOGY SHEET on the reverse of the front cover of each record of trial (DD Form 490 or DD Form 491).

All elapsed time, including elapsed time reported in the "Deductions" portion of Section X must be reported in the "Gross Processing Time" portion. To obtain the total net processing time, subtract the total deductible days from the total gross processing time.

The total cases reviewed must match the totals reported in Part IA.

PART XI **REHEARINGS HELD**

	GENERAL COURTS-MARTIAL	BCD SPECIAL COURTS-MARTIAL	NON-BCD SPECIAL COURTS-MARTIAL	SUMMARY COURTS-MARTIAL
NUMBER CASES		1	1	

PART XI INSTRUCTIONS

Report only those rehearings which have been acted on by the GCM AUTH.

A BCD SPCM is a case in which the sentence of the rehearing as approved by the GCM AUTH includes a bad conduct discharge, either suspended or unsuspended.

A Non-BCD SPCM is a case in which the sentence of the rehearing as approved by the GCM AUTH does not include a bad conduct discharge, either suspended or unsuspended.

NAVJAG 5800/9A (Rev 11-77)

SUPPLEMENTAL REPORT TO THE
CRIMINAL ACTIVITY, DISCIPLINARY
INFRACTIONS AND COURT-MARTIAL REPORT

RCS JAG 5800-4B

FROM Commanding Officer, Naval Station, Hutchinson, Kansas
(COMMANDING OFFICER, OFFICER IN CHARGE, OR SPECIALLY DESIGNATED OFFICER AUTHORIZED TO IMPOSE NJP)

TO Commandant, Seventh Naval District
(GCM AUTHORITY ACTING AS SUPERVISORY AUTHORITY OVER THE COMMAND ON THE LAST DAY OF THE REPORTING PERIOD)

SUBJ: REPORT FOR QUARTER ☒ 1 JAN - 31 MAR 1979 (YEAR) ☐ 1 APR - 30 JUN ____ (YEAR) ☐ 1 JUL - 30 SEP ____ (YEAR) ☐ 1 OCT - 31 DEC ____ (YEAR)

NAVY PERSONNEL REPORT

☐ NEGATIVE REPORT

NONJUDICIAL PUNISHMENTS[1] AND CIVIL CONVICTIONS[2]

		CONUS	OVERSEAS	TOTAL
NONJUDICIAL PUNISHMENT IMPOSED (ART. 15)[7]		195		195
U.S. FEDERAL AND STATE COURT FELONY CONVICTIONS[3]		2		2

DRUG AND MARIJUANA OFFENSES[4] - ARTS. 92.4 AND 134.16, UCMJ

	TOTAL NUMBER ACCUSED	TOTAL NUMBER ARTICLES	NUMBER SPECIFICATIONS BY TYPE OF OFFENSE: POSSESSION	USE	TRANSFER	SALE	OTHER
NONJUDICIAL PUNISHMENT (ART. 15) IMPOSED	9	16	10	6			

DISCHARGES EXECUTED[5]

TYPE OF COURT	PUNITIVE DISCHARGES EXECUTED FOR CONVICTION OF DRUG/MARIJUANA OFFENSES ONLY (ARTS. 92.4 AND 134.16, UCMJ) DD	BCD	UNDESIRABLE DISCHARGES EXECUTED FOR DRUG/MARIJUANA OFFENSES AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL	TYPE OF COURT	TOTALS - INCLUDE PRECEDING DRUG/MARIJUANA TOTALS: PUNITIVE DISCHARGES EXECUTED DD	BCD	UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL
GCM	1	3		GCM	2	8	
SPCM	▨	2		SPCM	▨	10	9

MARINE CORPS PERSONNEL REPORT

☒ NEGATIVE REPORT

NONJUDICIAL PUNISHMENTS[1] AND CIVIL CONVICTIONS[2]

		CONUS	OVERSEAS	TOTAL
NONJUDICIAL PUNISHMENT IMPOSED (ART. 15)[7]				
U.S. FEDERAL AND STATE COURT FELONY CONVICTIONS[3]				

DRUG AND MARIJUANA OFFENSES[4] - ARTS. 92.4 AND 134.16, UCMJ

	TOTAL NUMBER ACCUSED	TOTAL NUMBER ARTICLES	NUMBER SPECIFICATIONS BY TYPE OF OFFENSE: POSSESSION	USE	TRANSFER	SALE	OTHER
NONJUDICIAL PUNISHMENT (ART. 15) IMPOSED							

DISCHARGES EXECUTED[5]

TYPE OF COURT	PUNITIVE DISCHARGES EXECUTED FOR CONVICTION OF DRUG/MARIJUANA OFFENSES ONLY (ARTS. 92.4 AND 134.16, UCMJ)[6] DD	BCD	UNDESIRABLE DISCHARGES EXECUTED FOR DRUG/MARIJUANA OFFENSES AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL	TYPE OF COURT	TOTALS - INCLUDE PRECEDING DRUG/MARIJUANA TOTALS: PUNITIVE DISCHARGES EXECUTED DD	BCD	UNDESIRABLE DISCHARGES EXECUTED AT REQUEST OF ACCUSED IN LIEU OF COURT-MARTIAL
GCM				GCM			
SPCM	▨			SPCM	▨		

SIGNATURE OF COMMANDING OFFICER OR OFFICER AUTHORIZED TO SIGN BY DIRECTION

M. F. Smith M.F. Smith, LT, USN

S/N 0105-LF-108-8080

GENERAL INSTRUCTIONS

This report will be submitted semiannually to the general court-martial authority (GCM AUTH) acting as supervisory authority over the command on the last day of the reporting period.

The report will be submitted within five working days following the end of each three-month period.

DO NOT send the original or a copy of the report to the Judge Advocate General.

SPECIFIC INSTRUCTIONS

1. If conviction of more than one offense is involved in a particular NJP, report only one conviction for that individual's NJP.

2. When an offense is a felony under the law of the jurisdiction in which the accused was convicted, it should be reported as a civil court felony conviction. If conviction of more than one offense is involved in a particular trial, report only one conviction for that individual's trial.

3. Geographical Definitions
   CONUS - The 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.
   OVERSEAS - All areas other than the 48 contiguous United States and the District of Columbia and surrounding waters within the 3-mile limit.

   NJPs aboard ship should be reported by the actual geographical location of the ship. NJPs aboard ships not actually within the 3-mile limits of CONUS will be reported in the OVERSEAS column.

4. Report only on drug/marijuana offenses. Do not report on other types of offenses which may have been included in the NJP.

5. Report punitive discharges executed during reporting period, regardless of where or when trial was held.

6. Do not include discharges where conviction of any offenses other than drug/marijuana offenses were involved.

CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS AND COURT MARTIAL REPORT (Continued)

STATES - CITIES/LOCATIONS

STATES	ABBREVIATIONS	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Alabama	AL	None - report under "Other"	
Alaska	(See Country-Cities/Locations)		
Arizona	AZ	Yuma	YUM
Arkansas	AR	None - report under "Other"	
California	CA	Barstow	BTO
		Camp Pendleton	PEN
		China Lake	CHL
		Lemoore	LEM
		Los Angeles area	LOS
		Pt. Mugu-Port Hueneme	MGU
		San Diego area	SDG
		San Francisco area	SFR
		Twenty-Nine Palms	TNP
Colorado	CO	None - report under "Other"	
Connecticut	CT	New London	NLN
Delaware	DE	None - report under "Other"	
District of Columbia	DC	Washington	WSH
Florida	FL	Jacksonville-Mayport area	JAX
		Key West	KWS
		Orlando	ORL
		Pensacola	PCL
Georgia	GA	Albany	ALB
Hawaii	(See Country-Cities/Locations)		
Idaho	ID	None - report under "Other"	
Illinois	IL	Glenview	GLN
		Great Lakes	GLK
Indiana	IN	None - report under "Other"	

CRIMINAL ACTIVITY, DISCIPLINARY INFRACTIONS AND COURT-MARTIAL REPORT (Continued)

STATES - CITIES/LOCATIONS (continued)

STATES	ABBREVIATIONS	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Iowa	IA	None - report under "Other"	
Kansas	KS	None - report under "Other"	
Kentucky	KY	None - report under "Other"	
Louisiana	LA	New Orleans	NOL
Maine	ME	Brunswick	BRW
Maryland	MD	Bainbridge Bethesda Patuxent	BNB BTH PAX
Massachusetts	MA	Boston area	BSN
Michigan	MI	None - report under "Other"	
Minnesota	MN	None - report under "Other"	
Mississippi	MS	Gulfport Meridian	GPT MDN
Missouri	MO	None - report under "Other"	
Montana	MT	None - report under "Other"	
Nebraska	NE	None - report under "Other"	
Nevada	NV	None - report under "Other"	
New Hampshire	NH	Portsmouth	PTS
New Jersey	NJ	None - report under "Other"	
New Mexico	NM	Albuquerque	ABQ
New York	NY	Brooklyn-New York City area	BKN
North Carolina	NC	Camp Lejeune Cherry Point	LEJ CHP
North Dakota	ND	None - report under "Other"	

STATES - CITIES/LOCATIONS (continued)

STATES	ABBREVIATIONS	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Ohio	OH	None - report under "Other"	
Oklahoma	OK	None - report under "Other"	
Oregon	OR	None - report under "Other"	
Pennsylvania	PA	Philadelphia	PHL
Rhode Island	RI	Newport	NPT
		Quonset Point	QPT
South Carolina	SC	Charleston	CSN
		Parris Island	PAR
South Dakota	SD	None - report under "Other"	
Tennessee	TN	Memphis area	MFS
Texas	TX	Corpus Christi	COR
Utah	UT	None - report under "Other"	
Vermont	VT	None - report under "Other"	
Virginia	VA	Little Creek	LCR
		Norfolk area	NOR
		Quantico	QTO
Washington	WA	Seattle	STL
		Whidbey Island	WHD
West Virginia	WV	None - report under "Other"	
Wisconsin	WI	None - report under "Other"	
Wyoming	WY	None - report under "Other"	

COUNTRIES - CITIES/LOCATIONS

COUNTRIES	CODES	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
American Samoa	AQ	None - report under "Other"	
Antarctica	AY	None - report under "Other"	
Australia	AS	Canberra Exmouth	CNB EXM
Bahamas	BF	None - report under "Other"	
Bahrain	BA	None - report under "Other"	
Barbados	BB	None - report under "Other"	
Bermuda	BD	None - report under "Other"	
British Honduras	BH	None - report under "Other"	
British Indian Ocean Ter.	IO	None - report under "Other"	
British Solomon Islands	BP	None - report under "Other"	
British Virgin Islands	VI	None - report under "Other"	
Cambodia	CB	None - report under "Other"	
Canada	CA	Argentia, Newfoundland	ARG
Canal Zone	PQ	Fort Amador	AMD
China, Republic of	TW	None - report under "Other"	
Cook Islands	CW	None - report under "Other"	
Costa Rica	CS	None - report under "Other"	
Cuba	CU	Guantanamo Bay	GTO
Cyprus	CY	None - report under "Other"	

COUNTRIES - CITIES/LOCATIONS (continued)

COUNTRIES	CODES	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Dominican Republic	DR	None - report under "Other"	
France	FR	None - report under "Other"	
Gibraltar	GI	None - report under "Other"	
Greece	GR	None - report under "Other"	
Guam	GQ	Agana	AGN
Haiti	HA	None - report under "Other"	
Hong Kong	HK	None - report under "Other"	
Iceland	IC	Keflavik	KEF
Italy	IT	Naples	NAP
Jamaica	JM	None - report under "Other"	
Japan	JA	Atsugi	ATS
		Iwakuni	IWK
		Sasebo	SAS
		Yokosuka	YOK
Ryukyu Islands, Southern	YQ	Camp Butler, Okinawa	BUT
		Naha, Okinawa	NAH
Korea, Republic of	KS	None - report under "Other"	
Laos	LA	None - report under "Other"	
Malta	MT	None - report under "Other"	
Midway Islands	MQ	None - report under "Other"	
Morocco	MO	Port Lyautey-Kenitra	PLY
New Zealand	NZ	None - report under "Other"	
Panama	PN	None - report under "Other"	
Philippines	RP	Cubi Point	CBI
		Luzon	LUZ
		Subic Bay	SUB

COUNTRIES - CITIES/LOCATIONS (continued)

COUNTRIES	CODES	SPECIFIED CITIES/LOCATIONS	ABBREVIATIONS
Puerto Rico	RQ	Roosevelt Roads San Juan	RDS SJN
Ryukyu Islands, Southern	YQ	See Japan	
Spain	SP	Rota	RTA
Thailand	TH	None - report under "Other"	
Trust Territory of the Pacific Islands	TQ	None - report under "Other"	
United Kingdom	UK	London	LON
United States	US	Adak, Alaska Kodiak, Alaska Kaneohe, Hawaii Pearl Harbor-Honolulu area, Hawaii	ADK KOD KAN PLH
United States Misc. Caribbean Islands	BQ	None - report under "Other"	
United States Misc. Pacific Islands	IQ	None - report under "Other"	
Virgin Islands	VQ	None - report under "Other"	
Wake Island	WQ	None - report under "Other"	

SPECIAL POWER OF ATTORNEY

(see sections 0121 and 0133(4)(a))

SPECIAL POWER OF ATTORNEY (for accused who request representation by appellate defense counsel)

KNOW ALL MEN BY THESE PRESENT:

That, I ______________________________, ____________________.
Name and Rate/Grade SSAN

______________________________, having been convicted by ____________________
Branch of Service Type of court

court-martial on ____________________, do hereby make, constitute
Date

and appoint my appellate defense counsel of record appointed under the provisions of Article 70, Uniform Code of Military Justice, 10 U.S.C. § 870, and paragraph 102, Manual for Courts-Martial, United States, 1969 (Rev.), for the defense of my case, my true and lawful attorney or attorneys for me in my name, place, and stead, and for my use and benefit, and as my act and deed, to accept service of the United States Navy Court of Military Review decision in my case and thereby **start the running of the sixty (60) day appeal period within** which I may petition the United States Court of Military Appeals for a grant of review; and in the event any part of my conviction is affirmed by the United States Navy Court of Military Review, to execute, file, and prosecute a petition for grant of review in the United States Court of Military Appeals under the provisions of Article 67, Uniform Code of Military Justice, 10 U.S.C. § 867, or when in his judgment he deems further review of my conviction unwarranted due to lack of meritorious grounds to be urged upon appeal, to waive my right to petition the United States Court of Military Appeals. I fully understand my statutory right, (Article 67(c), Uniform Code of Military Justice, 10 U.S.C. § 867(c)) to have actual personal service of the decision of the United States Court of Military Review on myself and I hereby voluntarily, knowingly, and consciously waive that right.

GIVING AND GRANTING to my attorney full power and authority to do and perform every act and thing requisite and necessary to be done in the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power in me of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may or shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ __________ day of ____________________, 19__________.

______________________________(SEAL)
Signature of Accused

Signed, sealed, and delivered in the
presence of:

____
Witness

____
Witness

With the United States Armed Forces

At ___________________________
Location

I, _______ ____________________, the undersigned officer, do hereby certify that on this ____________________ day of ________ 19___, before me, personally appeared ____________________
Name and Rate/Grade

______________, SSAN ________________, whose home address is

____

and who is known to me to be a member of the United States Armed Forces on active duty and to be the identical person who is described in, whose name is subscribed to, and who signed and executed the foregoing instrument, and having first made known to him the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and the same is executed in my capacity as a judge advocate under authority granted to me by Article 136, UCMJ 10 U.S.C. § 936.

____
Signature of Officer

____
Typed Name of Officer

____
SSAN, Grade, and Branch of Service

____
Command or Organization

____
Permanent Home Address

SPECIAL POWER OF ATTORNEY
(for accused who do not request representation by appellate defense counsel)

KNOW ALL MEN BY THESE PRESENTS:

That I, ______________________________, ____________,
Name and Rate/Grade SSN

______________________________, having been convicted by
Branch of Service

______________________________ court-martial on ____________.
Type of Court Date

do hereby make, constitute, and appoint the Director, Appellate Defense Division, Navy Appellate Review Activity, Office of the Judge Advocate General, Washington, D.C. 20374, and/or such appellate defense counsel designated by that Director, my true and lawful attorney or attorneys for me in my name, place, and stead, and for my use and benefit, and as my act and deed, to accept service of the United States Navy Court of Military Review decision in my case after notification to the Director, Appellate Defense Division, by the Judge Advocate General that he has been unable reasonably to accomplish personal service on me and thereby start the running of the sixty (60) day appeal period within which I may petition the United States Court of Military Appeals for a grant of review; and in the event any part of my conviction is affirmed by the United States Navy Court of Military Review, to execute, file, and prosecute a petition for grant of review in the United States Court of Military Appeals under the provision of Article 67, Uniform Code of Military Justice, 10 U.S.C. § 867, or when in his judgment such appellate defense counsel deems further review of my conviction unwarranted due to lack of meritorious grounds to be urged upon appeal, to waive my right to petition the United States Court of Military Appeals for a grant of review.

GIVING AND GRANTING to my attorney full power and authority to do and perform every act and thing requisite and necessary to be done in the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power in me of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may or shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal this ____________ day of ____________, 19__.

______________________________ (SEAL)
Signature of Accused

Signed, sealed, and delivered in the presence of:

____
Witness

____
Witness

With the United States Armed Forces

At ______________________________
Location

I, ______________________________, the undersigned officer, do hereby certify that on this ____________ day of ______________, 19___, before me, personally appeared ______________________________
Name and Rate/Grade
______________, ______________, whose home address is __________
SSN

____

and who is known to me to be a member of the United States Armed Forces on active duty and to be the identical person who is described in, and whose name is subscribed to, and who signed and executed the foregoing instrument, and having first made known to him the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and the same is executed in my capacity as a judge advocate under authority granted to me by Article 136, UCMJ, 10 U.S.C. § 936.

____
Signature of Officer

____
Typed Name of Officer

____
SSN, Grade, and Branch of Service

____
Command or Organization

____
Permanent Home Address

REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE (See section 0135d)

UNITED STATES	)	[SPCM] [GCM] NCM ________
	)	REQUEST FOR IMMEDIATE EXECUTION
v.	)	OF [BAD CONDUCT] [DISHONORABLE]
	)	DISCHARGE ADJUDGED ON ________
[Name, service number, grade or rate and armed service]	)	BY [SPECIAL] [GENERAL] COURT-MARTIAL
	)	CONVENED BY ________
	)	[AT] [ON BOARD] ________

To: [Officer exercising general court-martial jurisdiction]

1. I, the undersigned, the accused in the above-captioned case, hereby request the immediate execution of the above-described ________ [dishonorable] ________ [bad conduct] discharge and my release from the naval service.

2. Naval Clemency and Parole Board review pursuant to SECNAV Instruction 5815.3 series [has been completed] [is not required].

3. I received a copy of the decision of the Navy Court of Military Review in my case on ________.

4. I have had fully explained to me and I understand my right, under Article 67(c) of the Uniform Code of Military Justice, to petition the U. S. Court of Military Appeals for grant of review within 30 days from the date I received my copy of the decision of the Navy Court of Military Review.

5. I do not have an appeal pending before the U. S. Court of Military Appeals at this time, nor do I now intend to appeal; however, I understand that, if this request is granted, it will not affect my right to appeal if I later change my mind and decide to appeal.

6. I have discussed this matter with ________, Name, grade, service number counsel of my own choice.

____
Signature of accused

CERTIFICATE

I, the undersigned officer of the grade, service number and branch of service below stated, certify that the above-named accused personally appeared before me this ______ day of ________, 19___, at

REQUEST FOR IMMEDIATE EXECUTION OF DISCHARGE (continued)

________________: I explained to him his right, under Article 67(c) of
Place
the Uniform Code of Military Justice, to petition the U. S. Court of Military Appeals for grant of review; I read aloud to him the foregoing request; and he thereafter signed the same in my presence and acknowledged that he did so as his free and voluntary act.

____
Signature

____
Name, grade, service number

RECORD OF AUTHORIZATION FOR SEARCH (See section 0148)

1. At ____________ on ______________ I was approached
Time Date

by ____________________________________ in his capacity
Name

as ____ who,
Duty[1]

having been first duly sworn[2] advised me that he suspected

____________________________________ of ____________
Name Offense

____ and

requested permission to search his/her ________________
Object or place[3]

for ____
Items[4]

2. The reasons stated to me for suspecting the above named person were:[5]

____

____

____

____

____

____

____

____

____

____

____

____

____

RECORD OF AUTHORIZATION FOR SEARCH (Continued)

3. After carefully weighing the foregoing information, I was of the belief that the crime of ______________________________ [had been] [was being] [was about to be] committed, that ______ ______________________ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated and that such items were [the fruits of crime] [the instrumentalities of a crime] [contraband] [evidence].

4. I have therefore authorized ____________________________ ____________________________ to search the place named for the property specified, and if the property be found there, to seize it.

____

Grade Signature Title

____

Date and time

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.

RECORD OF AUTHORIZATION FOR SEARCH (Continued)

2. Other than his/her own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God? (This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his/her prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.)

3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) Fruits of a crime (the results of a crime such as stolen objects): (2) Instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) Contraband (items, the mere possession of which is against the law -- marijuana, etc.); (4) Evidence of crime (example: bloodstained clothing of an assault suspect).

RECORD OF AUTHORIZATION FOR SEARCH (continued)

5. Before authorizing a search probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

a. An offense probably is about to be, is being, or has been committed; and

b. Specific fruits or instrumentalities of the crime, contraband or evidence of the crime exist; and

c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists.

If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

REQUEST FOR AUTHORIZATION
TO CONDUCT SEARCH AND SEIZURE

WITH THE UNITED STATES ARMED FORCES

AT ______________________________
(Location)[1]

1. I, ____,
(Name) (Organization or Address)

having first been duly sworn, state that[2] ____________________

____

____

____

2. I further state that[3] ______________________________________

____

____

____

____

____

____

____

3. In view of the foregoing, the undersigned requests that permission be granted for the search of[4] ________________________
(the person)

____
(and) (the quarters or billets) (and)

______________________________ and seizure of ________________
(the automobile)( )

____
(items searched for)

____

____

____
(Signature)

____
(Typed name and organization)

JURAT

I, ______________________________, do hereby certify that the foregoing request for authorization to conduct search and seizure was subscribed and sworn to before me this _____ day of _________, 19___, by ______________________________ (Name of person making statement), who is known to me to be ______________________________ (Status)[5]. And I do further certify that I am on this date empowered to administer oaths by authority of ______________________________ (Authority)[6].

____
(Signature)

____
(Typed name, grade, and Branch of Service)

____
(Command or Organization)

INSTRUCTIONS

1. Insert Country, State, and County in which request is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U.S. outside of the continental U.S."

2. In paragraph 1, set forth a concise factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional pages if necessary.

3. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property be be seized are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized is presently located on the person, premises, or place to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the request or on hearsay information which he has plus the underlying circumstances from which he has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the request should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the request has concluded that the informant, whose identity need not be disclosed, or his information was trustworthy. Use additional pages if necessary.

4. In paragraph 3, the person, premises, or place to be searched and the property to be seized should be described with particularity and in detail. The types of items which may be seized are set forth in paragraph 152, MCM, 1969 (Rev.).

5. "U.S. Armed Forces member on active duty," or "the spouse of a U.S. Armed Force member," or "a person serving with the Armed Forces," or other appropriate description of status.

6. "Manual of the Judge Advocate General of the Navy, section 2502a.(4)(b)", or "Art. 136, UCMJ", or other appropriate authority.

CONSENT TO SEARCH (See section 0148)

I, ____, have been advised that inquiry is being made in connection with ______________

____.

I have been advised of my right to not consent to a search of [my person] [the premises mentioned below].

I hereby authorize ____

______________________ [and] ______________________,

who [has] [have been] identified to me as ______________________

____
Position(s)

to conduct a complete search of my [person] [residence] [automobile] [wall locker] [   ] [   ] located at ______

____.

I authorize the above listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire.

This search may be conducted on ______________________.
Date

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

____
Signature

WITNESSES

____

____

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See section 0149)

Suspect's Rights Acknowledgement/Statement

FULL NAME (ACCUSED/SUSPECT)	FILE/SERVICE NO.	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT	SOCIAL SECURITY NUMBER		DATE OF BIRTH
NAME (INTERVIEWER)	FILE/SERVICE NO.	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) I am suspected of having committed the following offense(s): ______________________

____

____ ☐

(2) I have the right to remain silent; -- ☐

(3) Any statement I do make may be used as evidence against me in trial by court-martial; -- ☐

(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both.---------- ☐

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.-- ☐

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, -- ☐ and that,

(1) I expressly desire to waive my right to remain silent; -------------------- 1

(2) I expressly desire to make a statement; ---------------------------------- 2

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; -- 3

(4) I expressly do not desire to have such a lawyer present with me during this interview; -- 4

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. -- 5

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

The statement which appears on this page (and the following _____ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

COURT-MARTIAL CASE REPORT
NAVJAG 5813/2 (REV. 1-73)
S/N 0105-100-8161
INSTRUCTIONS ON REVERSE SIDE
☒ FINAL REPORT

REPORTS SYMBOL JAG 5813-1
CASE NUMBER - ENTER ON APPROPRIATE LINE
JUDACT MIL JUDGE: SP 1-74VA
GCM ________
DATE OF REPORT: 2 April 1973

TRIAL COUNSEL: COMPLETE ITEMS 1-7A AND DELIVER TO PRESIDING OFFICER PRIOR TO TRIAL

1. ACCUSED: A. NAME (LAST, FIRST, MIDDLE) DOE, John M.	B. PAY GRADE E-4	C. ORGANIZATION ☒ NAVY ☐ MARINE
2. CONVENING AUTHORITY CO USS UNSINKABLE (ABC-20)	3. LOCATION OF TRIAL (COMMAND AND GEOGRAPHICAL) COMFLOATFORLANT	
4. REFERRAL ☐ GCM ☒ SPCM DATE: 29 Mar 1973	5. RELATED CASE(S): None	

6. PERSONNEL: (NAME, GRADE AND SOURCE IDENTIFIED BY COMMAND AND GEOGRAPHICAL LOCATION)

A. TRIAL COUNSEL:
LT J. J. Smith, JAGC, USNR
Law Center, NAVBASE Portland

B. DEFENSE COUNSEL:
LT A. M. Jones, JAGC, USN
Law Center, COMNTC BANGOR

C. INDIVIDUAL COUNSEL:

D. MILITARY JUDGE: (1) WITHOUT MEMBERS ☒
(2) WITH MEMBERS ☐
LCDR F. C. Brown, JAGC, USN
Law Center, NAVBASE, Portland

7. A. CHARGES: (ARTICLES, NUMBER OF SPECIFICATIONS, EACH)	B. PLEAS	C. FINDINGS	D. DISMISSED
Art. 86			
(1) UA 3 Nov 72 - 17 Nov 72	G	G	
(2) UA 5 Aug 72 - 1 Nov 72	G	G	
Art. 121			
(1) Steal $60	NG	G	
(2) WrongApprop. $40	NG	G	

8. TIME SPENT IN COURT AND TRAVEL BY MILITARY JUDGE:
A. TRIAL DATE 29 Mar 1973 DURATION 1/2 HOURS
B. TOTAL HOURS. IN TRAVEL 2 IN COURT 2 1/2

9. MOTIONS TO DISMISS:
A. ☒ SPEEDY TRIAL ☐ GRANTED B. ☐ ________ ☐ GRANTED

10. ISSUES RESOLVED ADVERSE TO GOVERNMENT:
A. SEARCH AND SEIZURE ☐
B. SELF INCRIMINATION ☐
C. MENTAL CAPACITY ☐
D. MENTAL RESPONSIBILITY ☐

11. ANY PRIOR TRIAL OF THIS CASE? ☐ YES ☒ NO

12. THESE PROCEEDINGS TERMINATED BY MISTRIAL? ☐ YES ☒ NO

13. SENTENCE ADJUDGED:
A. DISCHARGE: DISMISSAL ☐ DD ☐ BCD ☒
B. CONFINEMENT: ____ YEARS 6 MONTHS
C. FORFEITURES: $50 per month FOR 6 mos. TOTAL ☐
D. REDUCTION TO E-1
E. OTHER PUNISHMENT:

14. NEGOTIATED PLEA: ☐ YES ☒ NO (See JAG Manual secs. 0114b(1)(c) and 0114b(2)(d).)

SIGNATURE OF MILITARY JUDGE

TANGO NUMBER: (IF ANY)

ROUTING - PLEASE INITIAL		
NAVMARJUDACT	JUDGE ADVOCATE GENERAL	
OINC	CODE 20	CODE 02

A-1-o(1)

INSTRUCTIONS

1. THE CASE REPORT IS DESIGNED TO SERVE AS A STATISTICAL SOURCE FOR PLANNING PURPOSES AND TO AFFORD THE JUDGE ADVOCATE GENERAL AN EARLY SOURCE OF INFORMATION REGARDING CASES WHICH MAY EVOKE PUBLIC OR CONGRESSIONAL INTEREST. ANY CIRCUMSTANCES INDICATING THAT A CASE MAY BECOME THE SUBJECT OF SUCH INTEREST WILL BE NOTED BELOW. AN INTERIM REPORT SHALL BE SUBMITTED ON EXCEPTIONAL CASES ONLY.

2. IT IS THE RESPONSIBILITY OF THE TRIAL COUNSEL TO INSURE THAT ITEMS 1 THROUGH 7A OF THE CASE REPORT ARE COMPLETED IN TRIPLICATE AND DELIVERED TO THE MILITARY JUDGE IMMEDIATELY PRIOR TO TRIAL.

3. THE MILITARY JUDGE WILL COMPLETE THE HEADING OF THE REPORT FORM AND ITEMS 7B THROUGH 14, AS APPROPRIATE.

4. A CASE REPORT IS TO BE SUBMITTED FOR EACH ACCUSED, INCLUDING THOSE TRIED IN COMMON AND A SEPARATE SEQUENTIAL NUMBER ASSIGNED AS TO EACH.

5. MILITARY JUDGES OF THE U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY WILL ASSIGN CASE NUMBERS, TO INCLUDE A SEPARATE SERIES OF SEQUENTIAL NUMBERS FOR GCM'S AND SPCM'S, ACCORDING TO INSTRUCTIONS ISSUED BY THE OFFICER IN CHARGE.

6. DISTRIBUTION. MILITARY JUDGES OF THE JUDICIARY ACTIVITY WILL RETAIN ONE COPY FOR BRANCH OFFICE FILES AND FORWARD ORIGINAL AND ONE COPY TO:

OFFICER IN CHARGE
U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY
WASHINGTON, D.C. 20390

COMMENTS:

(USE ADDITIONAL SHEET AS NECESSARY)

UNIFORM RULES OF PRACTICE BEFORE NAVY-MARINE CORPS COURTS-MARTIAL

PREAMBLE

These rules govern the trial of cases by Navy and Marine Corps courts-martial presided over by a military judge. These rules are intended to simplify and make uniform those court-martial procedures which the military trial judge has the authority to control under appropriate provisions of the Uniform Code of Military Justice, the Manual for Courts-Martial, United States, 1969 (Revised edition), and such regulations as the Secretary of the Navy may prescribe.

Compliance with these rules will promote an orderly, expeditious and just disposition of court-martial cases, as well as ensure the efficient use of military judges. Nevertheless, the military judge may modify or suspend any rule as required by the facts of the case and interests of justice.

The American Bar Association's Code of Professional Responsibility has for some time been applicable to lawyers involved in court-martial proceedings in the Navy and Marine Corps by virtue of section 0142b, Manual of the Judge Advocate General. In addition, the American Bar Association's Code of Judicial Conduct is applicable. The following American Bar Association Standards also apply to judges, counsel, and clerical support personnel of Navy and Marine Corps courts-martial, unless they are clearly inconsistent with the Uniform Code of Military Justice, the Manual of the Judge Advocate General, and applicable departmental regulations:

a. Fair Trial and Free Press

b. The Function of the Trial Judge

c. The Prosecution Function and the Defense Function

The provisions of section 0115, Manual of the Judge Advocate General, relating to release of information, are also applicable to all court-martial personnel.

DECORUM OF COURTROOM

Rule 1. As a traditional mark of respect for the dignity of the military judicial system, as represented by the military judge, who is charged by law with presiding over the trial, all persons in the courtroom, without regard to grade, will rise when the trial judge enters or leaves.

Rule 2. The military judge, either at an early Article 39(a) session or at the time of assembling the court with members, should make known any special rules relating to conduct which the accused, the counsel, the witnesses, the members of the court, and others in the courtroom will be expected to follow in the courtroom, and which are not set forth in these rules, the Uniform Code of Military Justice, the Manual for Courts-Martial, or departmental regulations.

Rule 3. Except as otherwise provided by the president of the court or the military judge, all military personnel required to be present at trial, including court members, counsel, the accused, the reporter, the bailiff, and any guards, and all military witnesses, shall appear in appropriate service uniform. If a military witness is called unexpectedly, he may be permitted to appear in other than the appropriate service uniform to avoid unduly delaying the trial.

Rule 4. (Reserved.)

Rule 5. Spectators are encouraged to attend trial and shall be permitted to observe any trial unless otherwise determined by the trial judge. Spectators may enter and leave the courtroom during open sessions of the court-martial subject to rules established by the trial judge, but they will not be permitted to disturb or interrupt court proceedings by their conduct.

Rule 6. It is improper for a spectator, verbally, by facial expression, shaking or nodding of the head, or other conduct, to demonstrate agreement or disagreement with testimony or other procedures at a trial. Spectators who violate this rule may be ordered from the courtroom by the trial judge. Counsel is responsible for advising his client and his witnesses and friends of the demeanor that is expected of them.

Rule 7. Smoking will not be permitted in the courtroom during open sessions of the court; nor will food and beverages, other than water, be permitted.

Rule 8. Photographs, sound recordings designed for public release, and radio and TV broadcasts shall not be made in or from the courtroom during sessions of the trial.

CONDUCT OF COUNSEL

Rule 9. Counsel owes a duty both to his client and to the court. Counsel shall assist the trial judge to maintain throughout the trial a quiet and dignified atmosphere in keeping with the highest traditions of judicial proceedings. He has the responsibility to know and observe the relationship and decorum that must exist between counsel and the trial judge. Counsel are obligated to acquaint accused and witnesses with appropriate courtroom procedures and decorum and, insofar as possible, ensure their adherence.

Rule 10. Unless otherwise authorized or directed by the trial judge, counsel shall stand when addressing the trial judge or court members and when conducting examination or cross-examination of witnesses. Defense Counsel and accused will rise when entering pleas and when findings and sentence are announced.

Rule 11. Counsel should refrain from any familiarity among themselves, with the trial judge, with members of the court, or with witnesses in the presence of the accused or while the court is in session. Colloquy or argument between counsel serves no proper purpose in the trial and shall not be permitted.

Rule 12. Counsel should conduct the questioning of witnesses and arguments to the court at a reasonable distance from the witness or court. At the discretion of the trial judge, counsel may be required to question witnesses and present arguments from a lectern, the counsel table, or other prescribed place. Except to present an exhibit, counsel should not approach a witness without asking the permission of the trial judge; nor should he position himself so as to block the view between witnesses and the other participants in the trial.

Rule 13. During the argument of counsel, opposing counsel shall remain seated at his position at the counsel table. Counsel shall not walk about, talk to others, or otherwise conduct himself so as to divert the attention of the court or any member. Counsel will not leave the courtroom without permission of the trial judge.

Rule 14. Except with the permission of the trial judge, only one counsel for each side (or, if there are multiple accused, one counsel for each accused) may examine any one witness or address the court on any particular issue or motion.

Rule 15. When counsel initially enters an objection, he shall state only the objection and the basis for it. Before proceeding to argue an objection, counsel will request permission of the trial judge and ascertain whether argument will be entertained in open or in an out-of-court session. Although argument identifying legal issues and presenting authorities is ordinarily appropriate, an objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

Rule 16. After the trial judge has announced his decision upon an objection, counsel shall not make further comment or argument except with the express permission of the trial judge.

Rule 17. All requests for rereading of questions or answers shall be addressed to the trial judge.

Rule 18. Counsel shall confine their opening statements to what they expect the evidence to prove. Counsel will not use the opening statement to argue the case or to instruct as to the law.

Rule 19. In a closing argument, counsel may make a reasonable comment on the evidence and may draw such inferences from the testimony as will support his theory of the case, but he shall not assert his personal belief in the justice of his cause or in the guilt or innocence of the accused; nor may he personally vouch for the credibility or lack of credibility of witnesses.

Rule 20. The trial judge may initiate the voir dire examination by referring to the charge against the accused, and by putting to the members questions touching qualifications, including impartiality, to serve as members of the court in the case.

The trial judge shall also permit such additional questions by counsel as he deems reasonable and proper.

Rule 21. Witnesses should be treated with fairness and consideration; they should not be unnecessarily crowded, shouted at, ridiculed, humiliated, or otherwise abused.

Rule 22. A military witness should not salute the trial judge or the president of the court. Counsel should ensure that witnesses presented by them understand the physical setup of the courtroom, where they should go, and what they should do. Unsworn statements made by a defendant in mitigation and extenuation will be given from counsel table, or standing before the court.

Rule 23. The court will cooperate with commanders, senior staff officers, and doctors and other professional witnesses and may, in extraordinary circumstances, accommodate them by permitting them to appear and testify out of order. Counsel should discuss such arrangements in advance with opposing counsel and the trial judge.

Rule 24. Counsel will make arrangements before a session to ensure that his witnesses will be immediately available when they are called.

EXHIBITS

Rule 25. Any exhibit intended to be used or introduced at trial should be marked "For Identification" prior to trial to save time in open court. Prosecution exhibits will be numbered consecutively with Arabic numerals and defense exhibits with capital letters. Appellate exhibits will be consecutively numbered with Roman numerals and will contain the prefix "Appellate." In questioning a witness or addressing the court about an exhibit, counsel shall specify the exhibit number or letter.

Rule 26. If the proceedings will thereby be significantly expedited, counsel proffering an exhibit should have copies made for the trial judge and opposing counsel. Proposed prosecution exhibits should be shown to the defense counsel before trial. The defense counsel may follow the same procedure.

Rule 27. If an item of evidence cannot be included in the record of trial for any reason, counsel proffering it should arrange to have a suitable substitute provided. Such a substitute, however, shall include an accurate and detailed description, either pictorially or written, as to the exhibit's size, shape, weight, substance, color, and any other relevant physical characteristics.

Rule 28. If a copy of a document is to be substituted in the record of trial for a document that was proffered in evidence, only a permanent-type copy may be used, such as a Xerox copy. A nonpermanent-type copy, such as a Thermofax copy, may not be used.

SUPPORTING TRIAL PERSONNEL

Rule 29. Bailiff. A bailiff should be present at every trial to announce the opening and closing of the court, to obtain witnesses as they are called to testify, to ask everyone to rise when the trial judge enters or leaves the courtroom, and to take care of administrative errands during the trial. The trial counsel is responsible for briefing the bailiff as to his duties.

Rule 30. Guards. When appropriate, a guard shall be detailed to ensure proper custody of the accused and to assist the court in preserving order and decorum. Unless otherwise directed by the trial judge, guards, if necessary, shall not be permitted inside the bar of the courtroom. Arms or weapons, except when such are to be exhibits, or when otherwise authorized by the trial judge, will not be allowed inside the courtroom.

DOCKETING AND OTHER PROCEDURAL MATTERS

Rule 31. Each military judge, with the assistance of a docketing clerk, should maintain in his office an orderly trial calendar which will make efficient use of available time and provide for expeditious scheduling of trials when requested by the jurisdiction in which he serves.

Rule 32. When a trial judge must try cases in more than one jurisdiction, a term of court system may be used. This system will require a jurisdiction to plan the trial of cases during designated periods. In jurisdictions which normally have a great number of uncontested cases (i.e., AWOL), such cases should be consolidated for trial at a continuous session of the court on one or more designated days of the week.

Rule 33. Setting trial date.

a. As soon as practicable after referral of charges for trial, the trial counsel will cause the charges to be served on the accused. Thereafter, proceeding by means of an exchange of memorandums with the defense counsel as specified in paragraph 6 of JAGINST 5813.4D, the trial counsel will determine the earliest available trial date and will request assignment of a trial judge and a firm trial date from the U. S. Navy-Marine Corps Judiciary Activity or appropriate Judiciary Branch Office. Immediately thereafter the trial counsel will furnish the trial judge with the following:

(1) A copy of the charge(s) and specification(s),

(2) An advance copy of the Pretrial Information Report (NAVJAG 5813/4), and

(3) A copy of the convening order and all modifications thereto.

b. As preparation for trial proceeds, the trial counsel will keep the trial judge informed of any changes in the estimated duration of trial, and if known, whether the case will be contested. If there is any valid reason why a trial cannot be held on the assigned trial date, the trial judge may grant an enlargement of time on an informal basis upon seasonable application of either counsel; otherwise he shall call an Article 39(a) session for the purpose of requiring counsel to show cause why the trial should not proceed as scheduled.

c. If within 10 days following the referral of charges to trial by general court-martial, or five days following referral to a special court-martial, the trial and defense counsel have not presented the trial judge with a firm date of trial, the trial judge will call an Article 39(a) session on his own motion.

Rule 34. Preliminary matter - motions and hearings. Counsel shall be prepared to dispose of all motions at one preliminary hearing during an Article 39(a) session. As soon as practicable after service of charges, and prior to the expiration of the time period prescribed in Rule 33, a defense counsel who wishes to present motions will complete Pretrial Information Report (NAVJAG 5813/4) and forward it to the trial judge with a copy to the trial counsel listing those motions to be presented and indicating thereon whether the hearing will involve argument only or the presentation of evidence. As soon as counsel have determined that a preliminary hearing is necessary, they will arrange with the trial judge for a mutually satisfactory date.

Rule 35. Stipulations. If the defense anticipates moving for dismissal of any charge on the basis that the accused has been denied his right to a speedy trial, counsel for both sides should endeavor prior to trial to enter into and prepare a stipulation of fact as to the chronology of events. In any case in which trial counsel anticipates that the defense may raise an issue of speedy trial, trial counsel shall prepare a chronology of pretrial events in the case, even if the defense is not willing to stipulate to such facts. In such case, trial counsel should also be prepared to present evidence to prove the pretrial events.

If a motion or any other issue involves only a dispute between the parties as to the law or ultimate question of fact, and not as to the underlying facts, counsel should endeavor to enter into and prepare, prior to trial, a stipulation of fact or a stipulation of expected testimony covering these matters. Counsel may enter into such a stipulation for the limited purpose of obtaining a ruling on a motion or other pleading.

Rule 36. Instructions. In a trial with members, if either counsel desires any specialized instructions, including any summarization of the evidence, or any instructions not contained in the Military Judge's Guide, DA Pam 27-9, he should submit such instructions to the trial judge in writing prior to the commencement of the Article 39(a) instruction conference. If either counsel desires a modification of a standard instruction from DA Pam 27-9, he shall also submit his proposed modification to the trial judge in writing.

Rule 37. (Reserved.)

Rule 38. Civilian Counsel. In each case in which a civilian attorney is retained by the accused, the detailed defense counsel shall furnish a copy of these rules to that civilian attorney and request, if not previously accomplished, a written entry of appearance as counsel of record for the defendant, addressed to the convening authority, with a copy to the trial judge.

THE BAILIFF'S HANDBOOK

PREAMBLE

The trial is the most visible of all those procedures that, while dedicated to the proposition of equal justice under law, are designed for the protection of the community. A trial should be conducted in such a manner as to command the respect of the members of the community it serves and to assure them that law is functioning in a manner which will preserve order. Anything that detracts from an atmosphere of respect for the law and the authority of the court is to be avoided.

The trial of a case should not be burdened with resolution of frivolous or petty administrative matters. Every party to the trial should know what is expected of him, and the military judge and trial counsel should receive the assistance of a bailiff who has been carefully instructed in the performance of his duties.

The bailiff may look to the trial counsel for specific instruction as to his duties and for directions before and after each session of the court. While the court is in session, the bailiff is under the supervision of the military judge and will assist the military judge and counsel in the conduct of an orderly trial. The bailiff should be familiar with the location of the principal offices and facilities, such as the library, within the law complex in which he is serving.

DUTIES OF THE BAILIFF

Prior to Trial

1. The bailiff will report to the trial counsel in the uniform of the day with duty belt and appropriate cover at least thirty minutes before the commencement of each day's proceedings. Thereafter he will report to the military judge 15 minutes before the commencement of the day's proceedings.

2. The bailiff will see that the courtroom, including the spectator area and the deliberation room for court members, has a neat and orderly appearance, and will place the furniture in proper arrangement.

3. The bailiff will ensure that the judge has the desk supplies desired and that the court members have pencils and pads of voting paper in their deliberation room.

Entry and Departure of Military Judge

4. When counsel for both sides, the accused, the reporter, and, when appropriate, the court members, are all present in the courtroom, the bailiff will notify the military judge and escort him to the courtroom. When the bailiff enters the courtroom he will state: "All persons please rise." When the military judge announces a recess or adjournment the bailiff will again state: "All persons please rise." If need be, he will also instruct the spectators to stand fast until the military judge has departed from the courtroom. The military judge will advise the bailiff in the event there is to be any departure from this procedure.

5. According to the instructions of the military judge, the court will be formally opened at the commencement of each day of the trial at which spectators are in attendance. On those occasions the bailiff will state:

> "All persons please rise. A (general) (special) court-martial convened by ____________________ is now in session, Military Judge _______________ (Captain) (Colonel) (Commander) (________) U. S. (Navy) (Marine Corps) presiding."

Entry of Court Members

6. When the court members enter the courtroom, and also when the court members stand to be sworn, the bailiff will announce: "Everyone, please stand," in a voice that can be heard by all spectators (unless advised of a different procedure by the judge).

Spectators and Members of News Media

7. The bailiff should be aware that military trials are open and that spectators and members of the news media are welcome in the courtroom to hear and observe the trial proceedings (unless otherwise instructed by the judge). He should see that they can enter the courtroom, be seated and leave quietly while the court is in session.

8. As the law does not permit picture taking or any type of broadcasts in the courtroom, the bailiff will not permit that type of equipment to be taken into the courtroom. Any problems concerning this matter should be brought to the attention of the trial counsel without delay.

9. Courtroom rules do not permit spectators to eat, sleep, smoke, or engage in conversation while the court is in session. The bailiff should quietly and diplomatically inform the offenders of these rules.

10. Anyone talking, or making noise, in the halls that is distracting in the courtroom will be informed by the bailiff that the court is in session and they can be heard in the courtroom.

11. Rowdiness and violence are not unknown in the courtroom. The bailiff must be alert and prepared to take immediate steps to suppress unruly behavior.

Court Members - In Closed Session

12. When the court members are in closed session, only the members may be permitted in the deliberation room. Therefore, the bailiff will not enter that room or permit anyone else to enter during the closed session.

13. The bailiff is the only contact between the court members and the parties to the trial during the periods the court members are deliberating. The bailiff will be available to the court members outside their deliberation room and immediately notify the trial counsel, defense counsel, and military judge when the court members are ready for the court to be reopened.

14. If the bailiff is instructed to deliver any item or message to the court members in closed session, he must first inform the judge and obtain his approval.

Miscellaneous Duties During the Trial

15. The bailiff will be prepared to furnish the following services:

a. Summon the court members to the courtroom at the beginning of each session of court when advised by the military judge or trial counsel.

b. Collect written questions from the court members upon the judge's request and hand them to the judge or trial counsel as instructed.

c. Summon witnesses to the courtroom when requested by counsel.

d. Deliver findings and sentence worksheets to the president of the court when instructed to do so.

e. Deliver items of evidence to the deliberation room, if instructed to do so by the military judge, when the court members retire to the deliberation room.

f. Perform administrative errands during the trial as requested by the military judge and trial and defense counsel.

Attitudes and Relation of the Bailiff to the Issues and Parties of the Trial

16. The bailiff should remain neutral throughout the trial of a case. That is, he should not assume a partisan attitude toward either side -- the prosecution or the defense. The bailiff should never participate in any discussion of the merits of the case and should never attempt to predict the outcome of the trial. He should also avoid making any comments on the performance of counsel for either side or on the testimony of witnesses.

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT OF RIGHTS
WHEN ATTACHED TO OR EMBARKED IN A VESSEL
(*See* subsection 0101d)

I, ______________________________, SSN ________________,
(Name and grade of accused)
assigned or attached to ______________________________,
have been informed of the following facts and rights:

1. That I am suspected of having committed the following violation(s) of the Uniform Code of Military Justice:

____

____

____

____

____

2. That it is contemplated that my case will be referred to (captain's mast) (office hours);

3. That, because I am attached to or embarked in a vessel, I do not have the right to demand trial by court-martial in lieu of (captain's mast) (office hours);

4. That, at (captain's mast) (office hours), I will receive a hearing at which I will be accorded the following rights:

a. To be present before the officer conducting the hearing;

b. To be advised of the offense(s) of which I am suspected;

c. To not be compelled to make any statement regarding the offense(s) charged and I realize that if I make any statement it may be used against me;

d. To be present during the presentation of all information against me, including testimony of witnesses in person or by the receipt of their written statement(s), copies of such statement(s) (to be) (having been) furnished to me;

e. To have made available to me for my inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

f. To have full opportunity to present any matter in defense -- that is, evidence tending to show that I did not commit the offense(s) charged against me -- as well as matters in extenuation or mitigation -- that is, any information tending to explain the circumstances surrounding the commission of the offense(s), or any other information which might justify the imposition of a lighter punishment than might otherwise be imposed;

g. To be accompanied at the hearing by a personal representative to speak on my behalf. I understand that my command has no obligation to provide such a personal representative and that it is my own obligation to obtain and arrange for the presence of such a personal representative if I wish one. The personal representative need not be a lawyer.

5. That, if punishment is imposed at (captain's mast) (office hours), I will have the right to appeal to higher authority, within a reasonable time, which normally is fifteen days after the punishment is imposed, if I consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

6. That, if not otherwise contemplated, I may request that the (captain's mast) (office hours) be open to the public, to the extent permitted by available space, unless security interests dictate otherwise. I may also request to confer privately with the officer who will hold the hearing, to relate matters which, in my opinion, are of a personal nature.

____
(Signature of accused and date)

____
(Signature of witness and date)

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT AND WAIVER OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL

[Record cannot be used in aggravation in event of later court-martial unless lawyer serves as personal representative (See subsection 0101d)]

I, ______________________________, SSN ____________________,
(Name and grade of accused)
assigned or attached to ______________________________,
have been informed of the following facts and rights:

1. That I am suspected of having committed the following violation(s) of the Uniform Code of Military Justice:

____

____

____

____

____;

2. That it is contemplated that my case will be referred to (captain's mast) (office hours);

3. That, at (captain's mast) (office hours), I will receive a hearing at which I will be accorded the following rights:

a. To be present before the officer conducting the hearing;

b. To be advised of the offense(s) of which I am suspected;

c. To not be compelled to make any statement regarding the offense(s) charged and I realize that if I make any statement it may be used against me;

d. To be present during the presentation of all information against me, including testimony of witnesses in person or by the receipt of their written statement(s), copies of such statements (to be) (having been) furnished to me;

e. To have made available to me for my inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

f. To have full opportunity to present any matter in defense -- that is, evidence tending to show that I did not commit the offense(s) charged against me -- as well as matters in extenuation or mitigation -- that is, any information tending to explain the circumstances surrounding the commission of the offense(s), or any other information which might justify the imposition of a lighter punishment than might otherwise be imposed;

g. To be accompanied at the hearing by a personal representative to speak on my behalf. I understand that my command has no obligation to provide such a personal representative and that it is my own obligation to obtain and arrange for the presence of such a personal representative if I wish one. The personal representative need not be a lawyer.

4. That, if punishment is imposed at (captain's mast) (office hours), I will have the right to appeal to higher authority, within a reasonable time, which normally is fifteen days after the punishment is imposed, if I consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

5. That, if not otherwise contemplated, I may request that the (captain's mast) (office hours) be open to the public, to the extent permitted by available space, unless security interests dictate otherwise. I may also request to confer privately with the officer who will hold the hearing, to relate matters which, in my opinion, are of a personal nature.

6. That, I have the right to demand trial by court-martial in lieu of (captain's mast) (office hours).

7. Knowing and understanding all of my rights as set forth in paragraphs one through six above, my desires are as follows:

(check one, as appropriate)

__________ I demand trial by court-martial in lieu of (captain's mast) (office hours).

__________ I do not demand trial by court-martial in lieu of (captain's mast) (office hours).

____
(Signature of accused and date)

____
(Signature of witness and date)

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT AND WAIVER OF RIGHTS
ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL

[Record may be used in aggravation in event of later court-martial (See subsection 0101d and section 0117)]

I, ______________________________, SSN ____________________,
(Name and grade of accused)
assigned or attached to __________________________________,
have been informed of the following facts and rights:

1. That I am suspected of having committed the following violation(s) of the Uniform Code of Military Justice:

____

____

____

____

____

2. That it is contemplated that my case will be referred to (captain's mast) (office hours);

3. That, at (captain's mast) (office hours), I will receive a hearing at which I will be accorded the following rights:

a. To be present before the officer conducting the hearing;

b. To be advised of the offense(s) of which I am suspected;

c. To not be compelled to make any statement regarding the offense(s) charged, and I realize that if I make any statement it may be used against me;

d. To be present during the presentation of all information against me, including testimony of witnesses in person or by the receipt of their written statement(s), copies of such statements (to be) (having been) furnished to me;

e. To have made available to me for my inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing;

f. To have full opportunity to present any matters in defense -- that is, evidence tending to show that I did not commit the offense(s) charged against me -- as well as matters in extenuation or mitigation -- that is, any information tending to explain the circumstances surrounding the commission of the offense(s), or any other information which might justify the imposition of a lighter punishment than might otherwise be imposed;

g. To be accompanied at the hearing by a personal representative to speak on my behalf. I understand that my command has no obligation to provide such a personal representative and that it is my own obligation to obtain and arrange for the presence of such a personal representative if I wish one. The personal representative need not be a lawyer.

4. That, if punishment is imposed at (captain's mast) (office hours), I will have the right to appeal to higher authority, within a reasonable time, which normally is fifteen days after the punishment is imposed, if I consider the punishment unjust or disproportionate to the offense(s) for which it is imposed.

5. That, if not otherwise contemplated, I may request that the (captain's mast) (office hours) be open to the public, to the extent permitted by available space, unless security interests dictate otherwise. I may also request to confer privately with the officer who will hold the hearing, to relate matters which, in my opinion, are of a personal nature.

6. That I have the right to demand trial by court-martial in lieu of (captain's mast) (office hours). That I have the right to obtain advice of rights from a lawyer prior to deciding whether I should demand trial by court-martial in lieu of (captain's mast) (office hours). Should I desire to obtain such advice from a lawyer, I understand that a military lawyer will be made available to advise me, free of charge, or in the alternative, I may obtain such advice from a civilian lawyer at my own expense. I understand that any action to give up these rights must be taken voluntarily by me after careful consideration. Therefore, I desire to: (check one)

_______Talk to a lawyer prior to deciding what I should do.

_______Voluntarily, knowingly, and intelligently, give up my right to talk to a lawyer.

____
(Signature of Accused)

____
(Signature of Witness)

____
(Date)

Note: If the accused states that he or she desires to obtain advice of rights from a lawyer prior to deciding whether to demand trial by court-martial in lieu of (captain's mast) (office hours), the remainder of this form shall not be completed until the accused has been given a reasonable opportunity to obtain this advice of rights.

7. Knowing and understanding all of my rights as set forth in paragraphs one through six above, my desires are as follows: (check one or more, as applicable)

________ I demand trial by court-martial in lieu of (captain's mast) (office hours).

________ I do not demand trial by court-martial in lieu of (captain's mast) (office hours).

________ My decision not to demand trial by court-martial in lieu of (captain's mast) (office hours) was made after talking to ____________ ____________________, a lawyer.

________ My decision not to demand trial by court-martial in lieu of (captain's mast) (office hours) was made by me without obtaining advice of rights from a lawyer. I made this decision freely and voluntarily, without any promises or threats being made to me.

____
(Signature of Accused)

____
(Signature of Witness)

____
(Date)

CAPTAIN'S MAST/OFFICE HOURS GUIDE

(NOTE: The formalities prior to and at the termination of the captain's mast or office hours normally are determined by custom and tradition in the Navy and Marine Corps.)

CO: You are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

____

____

____

You do not have to make any statement regarding the offense(s) of which you are accused or suspected and any statement made by you may be used as evidence against you. (Note: If it is reasonably foreseeable that the accused's statements during the captain's mast/office hours proceedings may be considered for introduction in evidence in a later court-martial, an explanation of rights and a waiver, in the format of Appendix A-1-n of the JAG Manual, will have to be obtained from the accused, during the hearing, before proceeding further.)

CO: You are advised that a captain's mast/office hours is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by courts-martial do not apply at captain's mast/office hours.

CO: I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining at this hearing. (Note: This statement will be either JAGMAN Appendix A-1-r, A-1-s or A-1-t.)

CO: Do you understand this statement and do you understand the rights explained therein?

ACC: ____.

CO: Do you have any questions about them or do you wish to make any requests?

ACC: ____

____.

CO: [To witness (if any are present)] What can you tell me about the accused's involvement in (these) (this) offense(s)?

WIT: ____

____

____

OR

CO: [To witness(es) who has/have previously provided written statement(s) when accused and CO both have copies of the statement(s).] Do you adopt your statement(s) as your testimony here today?

WIT: ____.

CO: Do you have anything to add to or change in your statement(s)?

WIT: ____

____

____.

CO: (To accused) Would you like me to ask any further questions of this witness?

ACC: ____.

CO: (After all witnesses are questioned) I have before me the following (documents) (statements) (other physical evidence) that will be considered by me. Have you been given the opportunity to examine them?

ACC: ____.

CO: (If the answer is "no," offer the accused the opportunity to examine the evidence.)

CO: Is there anything that you wish to offer? (If the answer is "yes," permit the accused the opportunity to call his witnesses, make a personal statement in defense, and present other evidence.)

ACC: ____.

CO: Are there any other witnesses you would like to call or any other evidence you would like to present?

ACC: ____.

CO: Is there anything that you wish to offer that would lessen the seriousness of (this) (these) offense(s) or mitigate them?

ACC: ____.

CO: (To witness) What can you tell me about (accused's name) performance of duty?

WIT: ____.

CO: (To accused) Is there anything else you would like to present?

ACC: ____.

CO: I have determined the offense(s) involved herein to be minor and punishable at captain's mast/office hours. I further find you (have not committed the offense(s) charged) (have committed the offense(s) charged) (have committed the following offense(s) charged)________________.

CO: (Accordingly, I impose the following punishment:)

(____)

CO: You are advised that you have the right to appeal this punishment to (identify the superior authority by name and organizational title). Your appeal must be made within a reasonable time -- which is normally 15 days. Following this hearing, ____________________ will advise you more fully of this right to appeal. Do you understand?

ACC: ____.

CO: You are dismissed.

(CAPTAIN'S MAST) (OFFICE HOURS)
ACCUSED'S ACKNOWLEDGMENT OF APPEAL RIGHTS

I, ______________________________, SSN ____________________
(Name and grade of accused)
assigned or attached to ______________________________, have been informed of the following facts concerning my rights of appeal as a result of (captain's mast) (office hours) held on ________________:

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Fifteen days after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the fifteen-day period, I should immediately advise the officer imposing punishment of such circumstances, and request an appropriate extension of time in which to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust;

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the pay grade of E-4 or above or was in excess of: arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, or detention of 14 days' pay, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

______________________________ ______________________________
(Signature of Accused & Date) (Signature of Witness & Date)

APPENDIX SECTION – 3

PRIVACY ACT STATEMENT FORMAT -- JAG MANUAL INVESTIGATION OR CLAIMS INVESTIGATION

1. AUTHORITY: "44 U.S.C. § 3101; 5 U.S.C. § 301;" [Specify, if possible, other statutory authority listed below that is peculiarly applicable to the matter under investigation.

Authorities Applicable to Various Investigations

(a) Requirement that enlisted men make up time lost due to misconduct or abuse of drugs or alcohol. 10 U.S.C. § 972(5).

(b) Retirement or separation for physical disability. 10 U.S.C. §§ 1201-1221.

(c) Executive Order 11476, "Manual for Courts-Martial," par. 133b.

(d) Uniform Code of Military Justice, 10 U.S.C. §§ 815, 832, 869, 873, 935, 936, 938-940.

(e) Military Claims Act, 10 U.S.C. § 2733.

(f) Foreign Claims Act, 10 U.S.C. §§ 2734, 2734a, 2734b.

(g) Emergency Payment of Claims, 10 U.S.C. § 2736.

(h) Non-Scope Claims, 10 U.S.C. § 2737.

(i) Duties of Secretary of the Navy, 10 U.S.C. § 5031.

(j) Duties of the Office Chief of Naval Operations, 10 U.S.C. §§ 5081-5082, 5085-5088.

(k) Duties of the Bureaus and Offices of the Department of the Navy and duties of the Judge Advocate General, 10 U.S.C. §§ 5131-5153.

(l) Duties of the Commandant of the Marine Corps, 10 U.S.C. § 5201.

(m) Reservist's Disability and Death Benefits, 10 U.S.C. § 6148.

(n) Requirement of Exemplary Conduct, 10 U.S.C. § 5947.

(o) Promotion of Accident and Occupational Safety by Secretary of the Navy, 10 U.S.C. § 7205.

(p) Admiralty Claims, 10 U.S.C. § 7622-7623.

(q) Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680.

(r) Financial Liability of Accountable Officers, 31 U.S.C. §§ 82a, 89-92, 95a.

(s) Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. §§ 240-243.

(t) Federal Claim Collection Acts, 31 U.S.C. §§ 71-75, 951-953.

(u) Forfeiture of Pay for Time Lost Due to Incapacitation caused by Alcohol or Drug Use, 37 U.S.C. § 802.

(v) Eligibility for certain veterans' benefits, 38 U.S.C. § 105.

(w) Postal Claims, 39 U.S.C. § 712.

(x) Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653.

(y) Public Vessels Act, 46 U.S.C. §§ 781-790.

(z) Suits in Admiralty Act, 46 U.S.C. §§ 741-752.

(aa) Admiralty Extension Act, 46 U.S.C. § 740.

(bb) Transportation Safety Act, 49 U.S.C. § 1901.]

2. PRINCIPAL PURPOSE(S): "The information which will be solicited is intended principally for the following purpose(s):"

[Specify each purpose listed below for which the record of the particular investigation could reasonably be used:

a. "Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave."

b. "Determinations on disciplinary or punitive action."

c. "Determinations on liability of personnel for losses of, or damage to, public funds or property."

d. "Evaluations of petitions, grievances, and complaints."

e. "Adjudication, pursuit, or defense of claims for or against the Government or among private parties."

f. "Other determinations, as required, in the course of naval administration."

g. "Public information releases."

h. "Evaluations of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy."]

3. ROUTINE USES: "In addition to being used within the Departments of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Veterans Administration for use in determinations concerning entitlement to veterans and survivors benefits; to Servicemen's Group

Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions."

4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

a. [Where disclosure is voluntary, as usually is the case, use one of the following statements, or a combination of the following statements, as applicable:

(1) (Where an individual is a subject of an investigation for purposes a. or b., above: "Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determinations] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.")

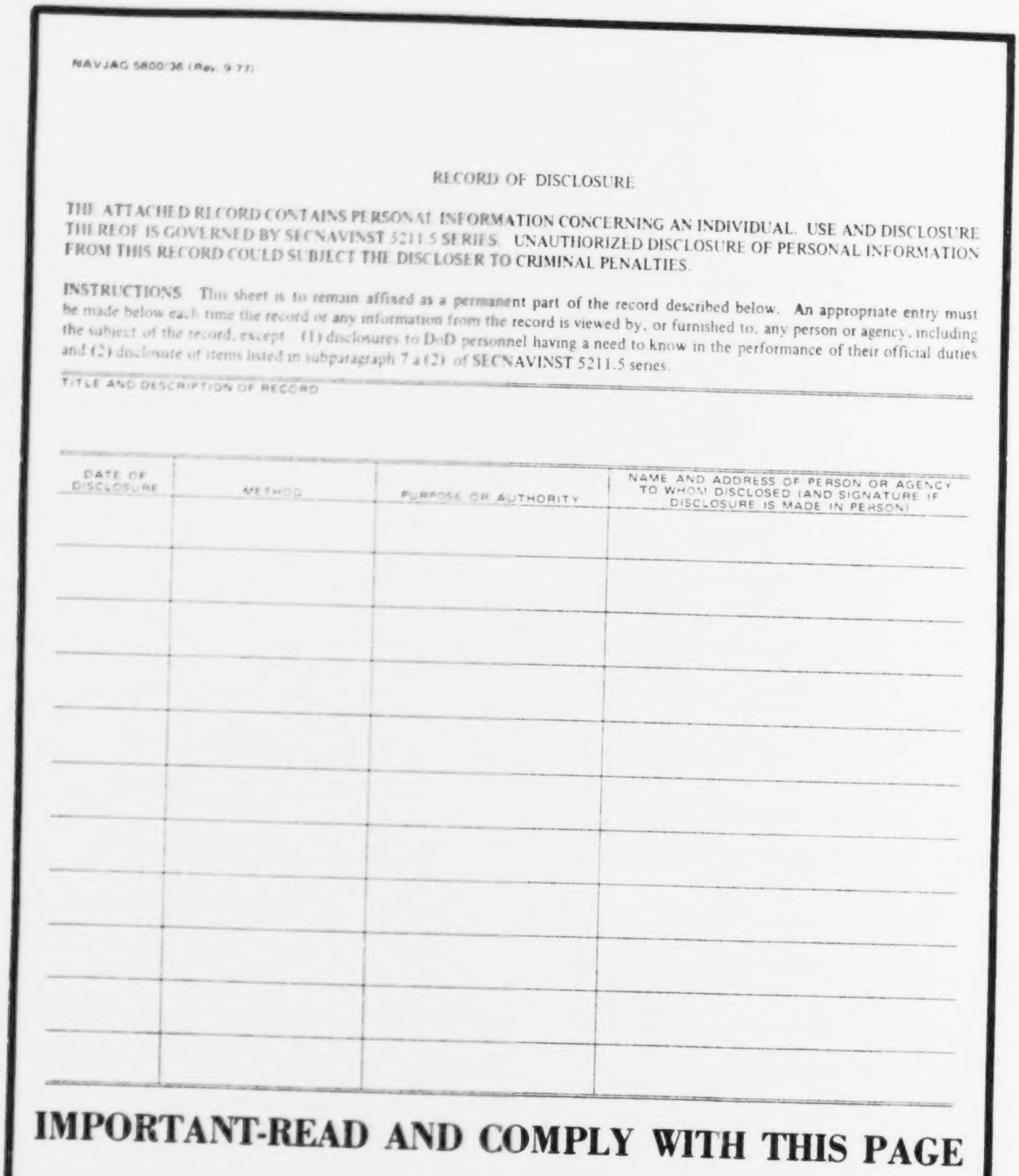
(2) (Where an individual is a subject of an investigation for purpose c., above: "Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held pecuniarily liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.")

(3) (Where the individual is a claimant or potential claimant in an investigation for purpose e., above: "Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation.")

(4) (Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose e., above; "Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in naval medical facilities.")

(5) (In any other case: "Disclosure is voluntary, and if you do not provide the requested information, any determinations or evaluations made as a result of this investigation will be made on the basis of the evidence that is contained in the investigative record.")]

b. [In the unusual situation where a specific statute, regulation, or lawful order of competent authority mandatorily directs an individual to disclose particular information for the Government's benefit in furtherance of a Government interest, policy, or objective, the following statement should be used: "Disclosure of (specify the particular relevant information required) is mandatory under (cite the statutue, regulation, or order), and refusal to disclose that information will subject you to possible disciplinary or criminal proceedings. Disclosure of any other information requested is voluntary, (and there will be no adverse effects if you elect not to disclose it) (but election not to disclose the information could. . .)."]



NAVJAG 5800/36 (Rev. 9-77)

RECORD OF DISCLOSURE

THE ATTACHED RECORD CONTAINS PERSONAL INFORMATION CONCERNING AN INDIVIDUAL. USE AND DISCLOSURE THEREOF IS GOVERNED BY SECNAVINST 5211.5 SERIES. UNAUTHORIZED DISCLOSURE OF PERSONAL INFORMATION FROM THIS RECORD COULD SUBJECT THE DISCLOSER TO CRIMINAL PENALTIES.

INSTRUCTIONS This sheet is to remain affixed as a permanent part of the record described below. An appropriate entry must be made below each time the record or any information from the record is viewed by, or furnished to, any person or agency, including the subject of the record, except (1) disclosures to DoD personnel having a need to know in the performance of their official duties and (2) disclosure of items listed in subparagraph 7 a (2) of SECNAVINST 5211.5 series.

TITLE AND DESCRIPTION OF RECORD

DATE OF DISCLOSURE	METHOD	PURPOSE OR AUTHORITY	NAME AND ADDRESS OF PERSON OR AGENCY TO WHOM DISCLOSED (AND SIGNATURE IF DISCLOSURE IS MADE IN PERSON)

IMPORTANT-READ AND COMPLY WITH THIS PAGE

NAVJAG 5800/36 (Rev. 9-77)(Back)

DATE OF DISCLOSURE	METHOD	PURPOSE OR AUTHORITY	NAME AND ADDRESS OF PERSON OR AGENCY TO WHOM DISCLOSED (AND SIGNATURE IF DISCLOSURE IS MADE IN PERSON)

APPENDIX SECTION -- 4

COURT OF INQUIRY

a. Appointing order (See section 0402c)

COMMANDER AMPHIBIOUS FORCE
UNITED STATES ATLANTIC FLEET

(File information)
______Feb 19___

From: Commander Amphibious Force, U. S. Atlantic Fleet
To: Rear Admiral J__________B. T____________, USN, 000-00-0000/1100

Subj: Court of Inquiry to inquire into the circumstances surrounding an explosion which occurred in USS____________________(_____), on________February 19___

Ref: (a) JAG Manual

1. In accordance with section 0402 of reference (a), a Court of Inquiry is hereby appointed to inquire into the circumstances surrounding an explosion which occurred in USS_________________(_____), on___February 19___. The Court will convene in USS__________ (________), at 1000 on___February 19___, or as soon thereafter as practicable.

2. The Court shall consist of you as president, Captain D__________E. F__________, USN, 000000/1100, and Captain G___________H. I___________, USNR, 000000/1105, as members. Commander J_____________K. L___________, JAGC, USN, 000-00-0000/2500, a lawyer qualified in the sense of article 27(b) of the Uniform Code of Military Justice, is hereby designated counsel for the Court.

3. The Court is directed to inquire into all the facts and circumstances connected with the explosion, the damage resulting therefrom, and deaths of and injuries to naval personnel; as appropriate, to perform the duties of an inquest; and to fix individual responsibility for the incident. After deliberation the Court shall submit its findings of fact, opinions and recommendations. The Court will express its opinion as to the line of duty and misconduct status of any injured personnel and will recommend administrative or disciplinary action, as appropriate.

4. The Court is directed to notify Commander M_________N. O_________, USN, 000-00-0000/1100, of the time and place of the meeting of the Court and that he is a party to the inquiry and to accord him the rights of a party pursuant to the provisions of section 0304 of reference (a). The Court is (not) authorized to designate additional parties to the inquiry during the proceedings (as may be appropriate). (As to the duty of the Court to designate parties, attention is particularly invited to section 0302d(2) of reference (a)).

5. The Court is directed to take the testimony of witnesses under oath and to submit a verbatim record of the proceedings.

6. By signed copy of this appointing order, Commanding Officer, USS__________(_______), is directed to furnish the necessary reporters and other clerical assistance to the Court for the purpose of recording the proceedings and preparing the record of this Court of Inquiry.

Copy to:
CINCLANTFLT
CO USS________(____)
Members
Counsel
Party

A_______________J. L_________________
Vice Admiral, U. S. Navy
Commander Amphibious Force
U. S. Atlantic Fleet

b. Modification to the Appointing Order (See section 0402e)

COMMANDER AMPHIBIOUS FORCE
UNITED STATES ATLANTIC FLEET

(File information)
____Feb 19______

From: Commander Amphibious Force, U. S. Atlantic Fleet
To: Rear Admiral J______B. T__________, USN, 000-00-0000/1100

Subj: Change in membership of court of inquiry

1. Captain S______T. U_____, USN, 000-00-0000/1100, is hereby appointed a member of the court of inquiry of which you are president convened by my appointed order of_______ February 19___, vice Captain D_______R. F_________, U. S. Navy, hereby relieved.

A____________J. L_______________
Vice Admiral, U. S. Navy
Commander Amphibious Force
U. S. Atlantic Fleet

Copy to:
CINCLANTFLT
CO USS______(_____)
Members
Counsel
Party

c. Letter of transmittal (See section 0435c)

Note: The president forwards the record of the proceedings of the court of inquiry to the convening authority by a short covering letter of transmittal.

From: Rear Admiral J________B. T___________, USN, 000-00-0000/1100
To: Commander Amphibious Force, U. S. Atlantic Fleet

Subj: Court of Inquiry to inquire into the circumstances surrounding an explosion which occurred in USS__________(_____) on___February 19__

Ref: (a) COMPHIBLANT AO ser_______of___Feb 19___

Encl: (1) Subject record of proceedings

1. As directed by reference (a), a Court of Inquiry was convened on___February 19___. The original record and____complete copies thereof are forwarded herewith as enclosure(1).

J______________B. T_______________

d. Endorsement of the convening authority (See section 0436)

FIRST ENDORSEMENT on RADM J________B. T____________'s ltr of ______________________

From: Commander Amphibious Force, U. S. Atlantic Fleet
To: Judge Advocate General
Via: Commander in Chief, U. S. Atlantic Fleet

Subj: (Same)

1. Readdressed and forwarded.

2. The court failed to accord the rights of a party to_____________; or

Opinion 6 of the investigative report is not substantiated by the findings of fact as___________; or

The evidence of record is clear and convincing that the (injuries) (disability) of Lieutenant_____________(were) (was) the direct result of his intemperate and excessive use of__________; or

Opinion 6 and recommendation 2 of the court's report are (disapproved) (disapproved in part) (approved in part)____________________; or

A letter of (reprimand) (admonition) has been issued to Lieutenant_______________ as a result of this inquiry in accordance with article 15 of the Uniform Code of Military Justice, chapter XXVI of the Manual for Courts-Martial, and section 0102 of the Manual of the Judge Advocate General; or

Subject to the foregoing remarks, the proceedings, findings of fact, opinions and recommendations of the court of inquiry in this case are approved; or

The record is returned for further inquiry into_____________; or________________.

A_____________J. L______________
Vice Admiral, U. S. Navy
Commander Amphibious Force
U. S. Atlantic Fleet

e. Record of proceedings of court of inquiry (See section 0435)

RECORD OF PROCEEDINGS

of a

COURT OF INQUIRY

convened on board

USS___________(_____)

by order of

Commander Amphibious Force

United States Atlantic Fleet

To inquire into an explosion in

USS________(____) which occurred on

___February 19___

Ordered on____February 19____ 1/-5/

Note:

1/ This is the date of the appointing order.

2/ A copy of the findings of fact, opinions and recommendations will be prefixed to the record.

3/ The record of proceedings shall be prepared on legal-size paper.

4/ Index in lengthy cases: An index is required whenever a record exceeds 20 pages. The index shall list the witnesses, a descriptive title of their duties in relation to the incident (e.g., Officer-of-the-Day, Engineer Officer, Navigator), whether called by the "Court" or "Party", and the page numbers on which their testimony appears. Exhibits, briefly described, offered or admitted in evidence, shall be listed in chronological order showing the page at which each was admitted in evidence.

5/ Appointing Order: The original appointing order follows the cover page and is lettered "A". Amendments or modifications thereto are lettered "B", "C", et cetera. When an index is required, it precedes the appointing order. Written communications with the convening authority will follow the appointing order and any amendments or modifications thereto.

Court meets.

-FIRST DAY-

On board
USS__________(______)
U. S. Naval Base
Norfolk, Virginia
Wednesday___Feb 19___

The court met at________. (Insert time, e.g., 0830.)

Present:

Rear Admiral J_________B. T__________, U. S. Navy;
Captain S____________T. U____________, U. S. Navy; and
Captain G____________H. I____________, U. S. Naval Reserve, members.
Commander J__________K. L____________, JAGC, U. S. Navy, counsel for the court.

The court was cleared and the counsel for the court read the appointing order, original prefixed, marked "A", and an amendment thereto, original prefixed marked "B".

All matters preliminary to the inquiry having been determined, and the court having decided to sit with open doors, the court was opened.

Party and counsel enter.

Commander M__________N. O___________, U. S. Navy, entered as a party to the inquiry and introduced Lieutenant P__________A. R________, JAGC, U. S. Naval Reserve, as his counsel (qualified in accordance with article 27(b) of the Uniform Code of Military Justice). Lieutenant R___________took seat as counsel.

Note: If a party enters and waives his right to be present or to be represented by counsel, this shall be reported verbatim. If any designated party or his counsel is absent the record shall indicate the absence, the reason therefor if known, and whether or not the party had been notified that he was a party and of the time and place of the meeting of the court.

Swearing the reporter, members and counsel for the court.

The appointed reporter, W_______E. D________, yeoman first class, U. S. Navy, the members of the court, and counsel for the court were sworn.

Note: Interpreters and assistant counsel, if any, also shall be sworn at this time.

Note: Informing the party or parties of their rights is accomplished at this time. The counsel informs the interested party or parties of their rights in accordance with section 0304; and this is reported verbatim. The record will clearly show that each has been designated as a party. Several parties may be informed of their rights at the same time. See section 0306 for additional rights of a person who has been injured.

Right to challenge accorded.

The party objected to Captain G_________H. I_________, U. S. Naval Reserve, as a member because Captain I___________had formed an opinion that the party was guilty of culpable conduct with regard to the question of the responsibility for the explosion.

The challenged member replied as follows:

* * * * * * *

Upon request of the party, the challenged member took the stand, was duly sworn and was examined as follows:

VOIR DIRE EXAMINATION

Questions by counsel for Commander O______________, party:

Q.__________________?
A.__________________.

Questions by counsel for the court:

Q.__________________?
A.__________________.

Neither counsel for the court, the court, nor the party desired to examine the witness further. The witness resumed his seat as a member of the court.

Ensign A___________I. K___________, U. S. Navy, was called as a witness by counsel for the court, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A.____________________.
Q.____________________?
A.____________________.

CROSS EXAMINATION

Questions by Commander O____________, party:

Q.____________________?
A.____________________.

Neither counsel for the court, the court, nor the party desired to examine the witness further. The witness was duly warned and withdrew.

The court closed at __(Indicate time),__ February 19___. The challenged member withdrew from the courtroom.

Challenge sustained.

The court opened at_____, ___February 19___.

All persons connected with the inquiry who were present when the inquiry closed were again present. The president announced that the challenge of the party was sustained and that Captain I____________was relieved as a member and excused.

Captain I_____________withdrew from his seat as a member.

Note:

1/ If the challenge reduced the number of members to less than three, the court would proceed as follows:

The number of members being reduced to less than three, the court directed the counsel for the court to inform the convening authority of this fact.

2/ If the court, after the challenge had three or more members remaining, it could proceed; however, the convening authority should be informed of the excusing by the court of the challenged member and the court would then proceed as follows:

The number of members remaining after excusing the challenged member being not less than three, the court determined to proceed. Counsel was instructed to inform the convening authority that Captain I__________, U. S. Naval Reserve, was challenged by an interested party and excused by the court.

3/ All communications with the convening authority will be in writing and will be made part of the record.

Adjournment.

The court adjourned at_____, ___February 19___(to await the appointment of a new member).

-SECOND DAY-

On board
USS____________(_____)
U. S. Naval Base
Norfolk, Virginia
Thursday, ___Feb 19___

The court met at _____.

All persons connected with the court who were present when the court adjourned were again present.

Counsel for the party absent.

Continue the above entry by stating "except Lieutenant R____________, counsel for the party who was called as a witness in a general court-martial." Commander O_________, the party stated· "I waive my right to have counsel present during this session of the court."

Note: When the party is represented by counsel and the counsel is not present, the record shall show verbatim accused's waiver of his right to have counsel present, if such be the case.

Communication from convening authority read.

Counsel for the court read a communication from the convening authority, original prefixed, marked "C", appointing Captain V________W. Z__________, U. S. Navy, a member of the court. A copy of the amendatory order was given to the party.

The party stated that he did not object to the new member or to any other member.

New member sworn.

The new member of the court was duly sworn and was afforded an opportunity to examine the record of proceedings of the court as far as it had progressed.

Note: If deemed advisable, the court will be recessed or adjourned for this purpose.

Witnesses separated.

No witnesses not otherwise connected with the inquiry were present.

Commander______________, U. S. Navy, took the stand as a witness, was duly sworn, informed of the subject matter of the inquiry, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A. ________________________________.

Witness introduces documentary evidence.

Q. Are you the custodian of the official log of USS______________(____)? If so, produce it.
A. I am, here it is.

Exhibits.

Note: Introducing documentary evidence or other material things, the following procedure should be followed by counsel:

Counsel: Request that the reporter mark this exhibit.

Note: The reporter is responsible for keeping a list of exhibits marked and also as finally accepted into evidence. The reporter will mark on the exhibit (or tag affixed thereto) the appropriate number and state:

Reporter: This will be Exhibit 1.

The log (Exhibit 1) was submitted to the party and to the court, and was offered in evidence by counsel for the court for the purpose of reading into the record such extracts therefrom as pertained to the explosion which occurred in USS_______________ (_____) on___February 19___.

There being no objection, it was received in evidence.

Q. Refer to the log and read such portions thereof as pertain to_________________.

The witness read from the said log extracts, copy appended, marked "Exhibit 1."

Neither the counsel for the court, the court, nor the party desired further to examine this witness. The witness was duly warned concerning his testimony and withdrew from the courtroom.

Examination of a witness called by counsel for the court.

P________S. L__________, fireman, U. S. Navy, was called as a witness for the court, was duly sworn, informed of the subject matter of the inquiry and examined as follows:

Note: To the extent feasible, the procedures for preparing verbatim records of courts-martial shall be followed in courts of inquiry. All questions and answers (except statements or extracts from documents subsequently admitted as exhibits) as well as all objections, arguments and discussions thereto and rulings thereon shall be recorded verbatim. In all other instances entries may be summarized as outlined below unless verbatim proceedings are required for clarity.

Note: The examination of witnesses shall be captioned as below. Whenever possible, the side interrogating a witness shall be given the opportunity to complete such interrogation of that witness before further questions are propounded by anyone else.

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. _______________.
Q. _______________?
A. _______________.

CROSS EXAMINATION

Questions by counsel for CDR__________________, party:

Q. ______________________?
A. ______________________.

REDIRECT EXAMINATION

Questions by counsel for the court:

Q. ______________________?
A. ______________________.

RECROSS EXAMINATION

Questions by counsel for CDR______________________, party:

Q. ______________________?
A. ______________________.

EXAMINATION BY THE COURT

Questions by a court member (president/CAPT____________):

Q. ______________________?
A. ______________________.

Neither counsel for the court, the court, nor the party desired to examine this witness further.

The president of the court informed the witness that he was privileged to make any further statement covering anything related to the subject matter of the inquiry that he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness made the following statement:

Witness:______________________________________.

Note: If a witness brings up any new matter, each counsel will be afforded the opportunity of further examination before the witness is excused.

Warning the witness. (See section 0420)

Note: A witness who by assignment or otherwise is subject to naval authority is cautioned in the following tenor: "You are instructed not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You will not allow any witness in this case to talk to you about the testimony he has given or which he intends to give. If anyone, other than counsel or the parties thereto, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel originally calling you as a witness."

Note: A witness who is not subject to naval authority by assignment or otherwise is cautioned in the following tenor: "You are requested not to discuss your testimony in this case with anyone other than a member of the court, parties thereto, or counsel. You should not allow any witness in this case to talk to you about the testimony he has given or which he intends to give. If anyone, other than counsel or the parties, attempts to talk to you about your testimony in this case, you should make the circumstances known to the counsel originally calling you as a witness. Your cooperation is requested so that the evidence to be received is not influenced by any discussion of that nature."

The witness was duly cautioned concerning his testimony and withdrew from the courtroom.

At this stage of the proceedings it appeared to the court that the conduct of Lieutenant D___________F___________, U. S. Navy, was subject to inquiry, and that he should properly be designated a party to the inquiry. Accordingly, the president of the court instructed counsel for the court to summon Lieutenant F__________to appear.

Time of session.

The court (adjourned) (recessed) at________, ___February 19___.

The court (closed) (opened) at_______, ___February 19___.

All persons connected with the inquiry who were present when the court (adjourned) (recessed) are again present in court (except___________).

J_________A. H_________, chief yeoman, U. S. Navy, was introduced as reporter and was duly sworn.

No witnesses not otherwise connected with the inquiry were present.

Designation of a party.

Lieutenant D___________F___________, U. S. Navy, entered. The president of the court informed him of its conclusion that his conduct appeared to be subject to inquiry and the reasons therefor, and advised him that he was a party to the inquiry. (See NOTE first day as to informing party of his rights.)

Lieutenant F___________requested and was granted a delay in the proceedings until he could obtain counsel.

Adjournment.

The court adjourned at_________, ___February 19___.

-THIRD DAY-

On board
USS___________(____)
U. S. Naval Base
Norfolk, Virginia
Friday, ___Feb 19___

The court met at____.

All persons connected with the court who were present when the court adjourned were again present in court.

Lieutenant F___________introduced Captain B_________O. J_________, U. S. Marine Corps (qualified in accordance with article 27(b) of the Uniform Code of Military Justice), as his counsel. Captain J_________took seat as such.

According rights to new party.

Lieutenant F___________examined the appointing order and modification(s) and stated that he did not object to any member of the court.

Note: An opportunity to examine the record of proceedings thus far conducted will be afforded Lieutenant F______________and his counsel. If deemed advisable the court will be recessed (or adjourn) for this purpose.

Lieutenant F_____________stated that he did not desire to recall any of the previous witnesses for further examination.

Note: If further examination of any of the witnesses is requested by a newly named party, such witnesses will be recalled, if practicable.

No witnesses not otherwise connected with the inquiry were present.

View by the court.

The president announced that the court would adjourn to the scene of the explosion in USS__________________(_______).

The court adjourned at_____________,____February 19____.

The court met at_____________,_____February 19____, in compartment A-106 USS_____________ (_______) to inspect the damaged area.

After completing inspection of the scene of the explosion, all personnel present returned to the regular place of meeting where the court was reassembled.

The court opened at____________,_____February 19____.

All the members, counsel for the court, the parties and their respective counsel and the reporter were present.

No witnesses not otherwise connected with the inquiry were present.

Person requests designation as a party.

Ensign J________D__________, U. S. Navy, entered, informed the court that he had a direct interest in the subject matter of the inquiry and requested that he be designated a party and be accorded the rights of a party.

Ensign D____________was directed to state the nature of his interest and replied as follows (Report the reply verbatim):

* * * * * * *

Designation as party and according of rights.

The court, having decided that Ensign D______________had a direct interest in the subject of the inquiry, he was designated a party. (See Note first day as to informing party of his rights).

Ensign D_____________stated: "I waive my right to be represented by counsel and to examine the record of proceedings thus far conducted." He read the appointing order and modification(s) and stated that he did not object to any member of the court; or

The court recessed at____________,____February 19____, to provide Ensign D____________ with an opportunity to examine all the evidence of record.

The court opened at____________,____February 19____.

All persons connected with the inquiry who were present when the inquiry recessed were again present in court.

No witnesses not otherwise connected with the inquiry were present.

Ensign D______________stated: "I have examined all the evidence of record and do not desire to recall any of the previous witnesses for further cross-examination."

Party called as a witness.

Lieutenant F__________________, U. S. Navy, a party to the inquiry (but not formally charged with an offense), was called as a witness by the court and duly sworn. He was informed by the court that he was suspected of an offense, to wit:* * * * * *, was advised of his right not to testify or make any statement regarding the offense of which he was suspected, was informed that any statement or testimony made by him could be used as evidence against him in any subsequent trial, and was reminded of his rights as a party (and as a person injured in the events under inquiry).

Lieutenant F__________________stated: "I understand my rights."

DIRECT EXAMINATION

Questions by counsel for the court:

Q. __________________?
A. __________________.
Q. __________________?

Objection by witness.

The witness declined to answer the question on the ground that it concerned the offense of which he was suspected and might incriminate him.

The counsel for the court replied. (This reply is to be recorded verbatim)

The president announced that, subject to objection by any member of the court, the witness' objection was overruled since the question was directed toward the same matter as the prior question which he had answered and the witness had waived his right to decline to answer that question.

The witness was directed to answer the question.

A. __________________.
Q. __________________?
A. __________________.

Commander O________________, party, moved to strike out this answer on the ground that it was an opinion of the witness.

The counsel for the court replied. (This reply is to be recorded verbatim)

The president announced that, subject to objection by any member of the court, the motion of the party was granted, and the answer would be stricken.

Court overrules president's ruling.

A member objected to the ruling of the president.

The court closed at_______________,_____February 19____.

The court opened at_______________,_____February 19____.

All persons connected with the inquiry who were present when the inquiry closed were again present in court.

The president announced that his previous ruling was withdrawn and that the motion to strike was denied.

CROSS EXAMINATION

Questions by a party, Commander O________________:

Q. ________________?
A. ________________.

Objection by witness to question.

Q. ________________?

The witness declined to answer the question on the ground that it concerned a separate offense of which he was suspected and concerning which he had not testified.

Counsel for the court replied. (This reply is to be recorded verbatim.)

Commander O_____________replied. (This reply is to be recorded verbatim.)

The president announced that, subject to objection by any member of the court, the witness' claim of privilege was sustained.

Questions by Ensign D______________, party:

Q. ________________?
A. ________________.

Party examines himself.

Questions by Lieutenant F_________________, party:

Q. ________________?
A. ________________.

REDIRECT EXAMINATION

Questions by counsel for the court:

Q. ________________?
A. ________________.

EXAMINATION BY THE COURT

Questions by the (president) (CAPT_________________):

Q. ________________?
A. ________________.

Neither the counsel for the court, the court, nor the parties desired further examination of this witness. He resumed his seat as a party.

Counsel for the court has no further evidence to present.

Counsel for the court stated that he had completed the presentation of his evidence.

Parties informed of right to call witnesses.

The president of the court informed the parties that they could now call witnesses and present any evidence in their own behalf.

Examination of witness called by party.

O______________ P. J______________, machinist's mate, third class, U. S. Navy, was called as a witness by Commander O______________, party, was duly sworn, informed of the subject matter of the inquiry, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. ______________.

Questions by counsel for Commander O______________, party:

Q. ______________?
A. ______________.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned concerning his testimony and withdrew from the courtroom.

Party calls self as witness.

Ensign D______________, a party, called himself as a witness. He was informed by the court that he was suspected of an offense, to wit: * * * *, was advised of his right not to testify or make any statement regarding the offense of which he was suspected, was informed that any testimony or statement made by him might be used as evidence against him in any subsequent trial, and was reminded of his rights as a party.

Ensign D______________ stated that he understood his rights and that he chose to testify relative to the offense of which he was suspected.

(Ensign D______________, a party, stated that he withdrew his request to testify.)

Ensign D______________, a party, took the stand to testify in his own behalf, was duly sworn, and examined as follows:

DIRECT EXAMINATION

Questions by counsel for the court:

Q. State your name, grade, organization and present duty station.
A. ______________.

Q. Are you a party to this proceeding?
A. I am.

Questions by Ensign D______________, party:

Q. ______________?
A. ______________.

Questions by counsel for Commander O______________, party:

Q. ______________?
A. ______________.

CROSS EXAMINATION

Questions by counsel for the court:

Q. ______________?
A. ______________.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further. He resumed his seat as a party.

Parties rest.

None of the parties desired to present additional evidence.

Witness for the court.

The court announced that it desired further testimony and directed that R___________ O. J______________, chief gunner's mate, U.S. Navy, be called as a witness for the court.

R______________O. J______________, chief gunner's mate, U.S. Navy, was called as a witness for the court, was duly sworn, informed of the subject matter of the inquiry, and was examined as follows:

EXAMINATION BY THE COURT

Questions by counsel for the court:

Q. State your name, rate, organization and present duty station.
A. ______________.

Questions by the (president) (CAPT______________):

Q. ______________?
A. ______________.

Neither the counsel for the court, the court, nor the parties desired to examine this witness further.

The president of the court informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry that he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned concerning his testimony and withdrew from the courtroom.

Statements of Parties.

Commander O______________ and Ensign D______________, parties, each submitted a signed written statement, which statements were read and are appended as exhibits (numbered _____ and _____, respectively).

Lieutenant F______________, party, made an oral statement as follows:

* * * * * * * *

Arguments.

Counsel for the court read his written opening argument, which is appended, marked _____.

Note: Counsel may waive opening argument. He may also make an oral argument in lieu of a written one, in which event it will be recorded in the record as given.

Commander O______________, party, read a written argument, which is appended, marked ______________.

Lieutenant F______________, party, made the following oral argument:

* * * * * *

Note: Argument may be made by either the party or his counsel.

Ensign D______________, party, desired to make no argument.

The counsel for the court made the following closing argument:______________.

Inquiry completed.

President: Counsel for the court and the party (parties) having no further evidence or argument to present to this court of inquiry, the court is now adjourned to consider all the evidence and to submit to the convening authority its findings of fact, opinions, and recommendations. The court will be closed.

The court closed at __________, _____ February 19___.

Findings of fact, opinions, and recommendations.

The court, after inquiring into all the facts and circumstances connected with the incident which occasioned the inquiry, and having considered the evidence, finds as follows [and submits the following opinions and recommendations]:

FINDINGS OF FACT **(See section 0430)**

1. That a violent explosion occurred at 0939, _____ February 19___, in USS ______________ (______).

2. ****************

OPINIONS (See section 0431)

1. That the cause of the explosion was ****************.

2. That Commander O____________was derelict in his duties in that he****************.

3. That the injuries to ************ which were caused by the explosion occurred in the line of duty and were not the result of their misconduct.

4. ****************

RECOMMENDATIONS (See section 0432)

1. That Commander M____________N. O____________, U. S. Navy, be brought to trial by general court-martial on the charge of violation of Article ******, Uniform Code of Military Justice. The appropriate charge sheet, signed by the president of this court as accuser, is forwarded herewith.

2. That Lieutenant D____________ F____________, U. S. Navy, be addressed a letter of reprimand for his failure to ***************. A draft of such a letter is forwarded herewith.

3. That, in order to prevent a recurrence of this type of explosion, the following action be taken: ***************.

J____________B. T____________
Rear Admiral, U. S. Navy
President

D____________E. F____________
Captain, U. S. Navy
Member

Note: If there is no minority report, member signs as shown above. If there is a minority report, the member who disagrees with the majority does not sign. Instead he submits a minority report and signs as follows:

Minority report. I concur with the majority report except as follows:

I disagree with the court's finding number 3 for the reason that ____________.

I disagree with the court's opinion number 2 for the reason that ____________.

I disagree with the court's recommendation number 1 for the reason that ________.

The following additional (findings of fact) (opinions) (and recommendations) are submitted:________________________. (See section 0433)

S____________T. U____________
Captain, U. S. Navy
Member

Final entry. (See section 0435b)

J____________B. T____________
Rear Admiral, U. S. Navy
President

J____________K. L____________
Commander, JAGC, U. S. Navy
Counsel for the court

Note: If either the president or the counsel for the court can not authenticate the record, a member shall sign in lieu thereof. (See section 0435b). Members authenticating the record sign as follows:

____
Captain, U. S. Navy, a member in lieu of
the (president)(counsel) because of his
(death)(disability)(absence)

Documents appended.

Note: Here all exhibits received in evidence are appended in the order in which they were marked during the inquiry. See section 0424 with respect to substituting a description, photograph, or copy of any exhibit. Section 0432 requires that, when a letter of censure is recommended, a draft of the letter be prepared and forwarded with the record. See Appendix 1-a, 1-b(1), and 1-c(1).

APPENDIX SECTION – 6

INFORMAL ONE OFFICER INVESTIGATION

a. Appointing order [1] (See section 0602a)

(File information)
_____Feb 19____

From: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton, California

To: Captain X_______Y. Z________, 000-00-0000/0302 USMC [2]

Subj: Investigation to inquire into the circumstances connected with _______ which occurred at __________on_________February 19___

Ref: (a) JAG Manual

1. You are appointed to conduct an informal investigation, in accordance with chapter VI of reference (a), as soon hereafter as practicable, for the purpose of inquiring into all the circumstances connected with___________which occurred at___________on _____February 19____.

2. You will conduct a thorough investigation into all the circumstances connected with _____________ and report your findings of fact, opinions [3] and recommendations [3] as to the cause of _____________, the resulting damage, the injuries to members of the naval service and their line of duty and misconduct status, the circumstances attending the death of members of the naval service, and responsibility for _________ including any recommended administrative or disciplinary action.

3. In particular, your attention should be directed to sections 0306, 0606d(3), 0308, and Appendix A-3-a of reference (a) and Article 31, UCMJ.

4. By copy of this appointing order, Commanding Officer, Headquarters Company is directed to furnish the necessary reporters and clerical assistance for recording and transcribing the testimony of witnesses and assisting you in preparing the report of the results of your investigation.

/s/ P____________C. K____________

Copy to:
[CG, MCB, CamPen, Calif]
[CO, HQCo, HQBn, MCB, CamPen, Calif] (Signed copy)

1/ A written appointing order is not necessary for an informal one officer investigation; however, one may be issued at the discretion of the convening authority. Such an order may facilitate the conduct of interrogation of witnesses outside the naval service if the investigating officer has it available for immediate production to anyone who questions his authority or evinces reluctance to talk to him.

2/ The investigating officer is not required to be a commissioned officer. See 0601.

3/ See 0608d-e.

b. Informal investigative report (See section 0609)

From: Captain X____________Y. Z____________, 000-00-0000/0302 USMC

To: Commanding Officer, Headquarters Battalion, Marine Corps Base,
Camp Pendleton, California

Subj: (Same as subject of appointing order)

Encl: (1) Appointing order and modifications thereto (if any were issued)
(2) [Summary of (or verbatim) sworn (or unsworn) testimony of ____________
____________, (a witness)]
(3) [Summary of (or verbatim) sworn (or unsworn) testimony of ____________
____________, (a witness)]
(4) Statement of ____________________, signed by witness
(5) Description of ____________________(knife found at scene of the accident)
(6) Photograph of ____________________depicting ______________________

Note: The testimony of each witness should be a separate enclosure to the investigative report. Enclosures containing testimony or statements of witnesses should precede enclosures in the form of other documents, descriptions of real evidence, photographs, et cetera. See 0608f.

Preliminary Statement

1. Paragraph 1 of the investigative report shall contain information in the form of a "preliminary statement". Its length may make it necessary to continue on into one or more additional paragraphs. See section 0608. The purpose of the preliminary statement is to inform the convening and reviewing authorities that the requirements as to procurement of evidence and any directives of the convening authority have been met. Where applicable, the investigating officer should set forth the name and organization of the judge advocate consulted. After setting forth the nature of the investigation, he will set forth the difficulties encountered in the investigation, if any; limited participation in the investigation by a member; or any other information necessary for a complete understanding of the case. A report of the investigating officer's itinerary is not necessary. Notwithstanding that it may be set forth in the preliminary statement, the findings of fact shall include all essential facts developed by the investigation.

Findings of Fact

1. ____________________
2. ____________________
3. ____________________

Note: See section 0608c. The findings of fact constitute the investigating officer's description of the details of the events as derived from his evaluation of the evidence. The findings must be as specific as possible as to time, places, persons, and events. Each fact may be made a separate finding, or facts may be grouped into a narrative. It is for the investigating officer to determine the most effective presentation for a particular case. Each fact set forth must be supported by either the testimony of a witness, statement of the investigating officer, or documentary or real evidence appended to the investigative report as an enclosure thereto.

Opinions

1. ____________________
2. ____________________
3. ____________________

Note: See section 0608d. An opinion is a logical inference or a conclusion drawn from the prior factual description of the events. For guidance as to the opinions normally required in specific situations, see chapters VIII and IX. Each opinion set forth must be supported by the findings of fact. Determination of line of duty and misconduct is properly stated as an opinion.

Recommendations

1. ____________________
2. ____________________
3. ____________________

Note: See section 0608e. If the investigating officer recommends trial by court-martial, a charge sheet, signed and sworn to by the investigating officer shall be prepared and submitted to the convening authority with the investigative report. See paragraph 29, MCM. If a punitive letter of reprimand or admonition or a nonpunitive letter is recommended, a draft of the recommended letter shall be prepared and forwarded with the investigative report.

(Signature of investigating officer)

APPENDIX SECTION – 8

a.

Article 17-18 of the Manual of the Medical Department: (See section 0810e)

"17-18. Post Mortem Examinations and Autopsies

"(1) When a member of the uniformed services on active duty or active duty for training dies aboard a naval ship, at a naval station, in a naval aircraft, or outside the jurisdiction of local civil authorities of the United States, and (a) death occurs under unnatural or suspicious circumstances, (b) there is reason to believe that the cause of death might constitute a menace to the public health, (c) the cause of death is unknown, or (d) death occurs while serving as an aircrew member in a military aircraft, the medical officer will recommend to the commanding officer having custody of the remains that a post mortem examination be authorized to determine the cause of death. Under these circumstances the commanding officer may authorize such a post mortem examination.

"(2) Except as set forth in subarticle 17-18(1), autopsies may be performed only with the consent of the person or persons having the right of custody of the remains for burial or upon request of the local coroner or medical examiner. When authorization for a post mortem examination is required such authorization shall be obtained on Standard Form 523 (Authorization for Post Mortem Examination).

"(3) Whenever an autopsy is performed it shall be done promptly and with a minimum of disfiguration. The expeditious release of remains for preparation, encasement, and shipment to the next of kin is of utmost importance. All autopsies shall be reported on Standard Form 503 (Autopsy Protocol) and a copy thereof shall be attached to the original of the NAVMED-N which is forwarded to BUMED."

d. Letter report of death. (See section 0810f.)

From: Commanding Officer, 31st Mobile Construction Battalion
To: Judge Advocate General of the Navy
Via: Commander, Construction Battalions, U. S. Pacific Fleet

Subj: BU3 Crain L. OPERATER, USN, 123 45 6789, death

Ref: (a) CNO ltr Ser 0048P621f of 8 July 1969

1. This command is engaged in performing a classified project NIGHTENGALE (U) pursuant to reference (a).

2. At about 1000 on Friday, 24 April 1970, while clearing a jungle area at coordinates 2761-3215 on Small Scale Map R-27, enclosure (5) to reference (a), Petty Officer OPERATER was directing two other men on a bulldozer in the uprooting of trees and brush. OPERATER and the other men were frequently slapping exposed portions of their bodies in response to bites of insects which abound in this area. OPERATER was observed by the two other men (named and identified opposite numbers 43 and 57 in enclosure (10) to reference (a)) to sit down on a felled tree trunk at about 1005, holding his head in his hands. OPERATER did not arise, and one of the men (number 43) jumped from the bulldozer and walked toward OPERATER. As he reached a point about ten feet from where OPERATER was sitting, OPERATER was observed to fall forward on the ground, face-down, and to start twitching his arms and legs convulsively. He gave no indication of being conscious, and did not respond to questions by either of the other men. The two men lifted OPERATER to the bulldozer and brought him back to the base camp, ten miles away. He was observed to have a needle-like thorn, about four inches in length, projecting from the back of his neck, left side, just above the collar line. This number 43 withdrew and wrapped in a piece of tissue paper. Twitching of legs and arms continued en route the base camp, but seemed to be spaced at longer intervals. The last such episode was observed at about 1115, just before reaching the camp. Upon reaching the camp, a hospital corpsman first class (number 12 on enclosure (10)) was summoned from a nearby area, arriving at about 1125. No vital signs were observed and OPERATER was pronounced dead as of 1130.

3. Pursuant to message instructions from OpNav (Op621f), the body of OPERATER, along with the thorn removed from his neck, was transported to Andrews Air Force Base, Washington, D. C., to be taken to Walter Reed Army Hospital, for autopsy and toxicological examination by the Armed Forces Institute of Pathology.

N. J. Near
N. J. NEAR
Captain, CEC, USN

(See section 0810f)

FIRST ENDORSEMENT on 31st MCB ltr 25 April 1970

From: Commander, Construction Battalions, U. S. Pacific Fleet
To: Judge Advocate General of the Navy

Subj: BU3 Crain L. OPERATER, USN, 123 45 6789, death of, on 24 April 1970, at 1130

Ref: (b) Director AFIP msg 031332Z May 70 to CHNAVPERS

1. Forwarded.

2. Reference (b) indicates the cause of death of OPERATER as a central nervous system poison, injected by the thorn removed from his neck. It is improbable that either of his co-workers was in any way involved in bringing about his death.

3. Until such time as information pertaining to Operation NIGHTENGALE may be generally published, it is recommended that OPERATER's death be stated simply as having been due to accidental injuries received in the course of a jungle clearing mission.

H. E. Beegle
H. E. BEEGLE
RADM, CEC, USN

e. EXAMPLE OF INJURY REPORT USING NAVJAG 5800/15 (See section 0814c)

INJURY REPORT

NAVJAG 5800/15
(REV. 3-77)
S/N 0105-LF-105-8075

THIS FORM IS TO BE USED ONLY FOR NOT MISCONDUCT AND IN LINE OF DUTY DETERMINATIONS AND IN ACCORDANCE WITH CHAPTER VIII, JAG MANUAL. SUBMIT TYPEWRITTEN ORIGINAL TO THE JUDGE ADVOCATE GENERAL VIA OFFICER EXERCISING GCM AUTHORITY.

RCS JAG 5800-19

FROM: (NAME OF REPORTING COMMAND)
Naval Station, Norfolk, Virginia 23511

TO:
Judge Advocate General, Navy Department, Washington, DC 20370

VIA: (OFFICER EXERCISING GCM AUTHORITY)
Commandant, Fifth Naval District, Norfolk, Virginia 23511

1. NAME OF INJURED SERVICE MEMBER Water Tight DOOR	2. SSN 890-12-3456	3. GRADE BMSN	4. SERVICE USN

5. DATE AND PLACE OF INCIDENT CAUSING INJURY
31 May 1976, Hobby Shop, BLDG 114, NavBas NorVa

PART I – TO BE COMPLETED BY MEDICAL OFFICER

	DATE	TIME	PLACE
6. FIRST SEEN BY MEDICAL OFFICER	31 May 76	1400	Naval Hospital, Portsmouth, VA

7. DIAGNOSIS
Half of Distal Phalange, Middle Finger, right hand, cleanly severed. No secondary infection apparent.

8. PROGNOSIS
Finger cannot be surgically restored; otherwise good

CONDITION OF INDIVIDUAL AT TIME OF EXAMINATION

9. UNDER INFLUENCE OF
☐ ALCOHOL ☐ BARBITURATES ☐ NARCOTICS
☐ OTHER (SPECIFY)

10.
☒ NOT UNDER INFLUENCE OF ANY LISTED IN ITEM 9

11.
☐ UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION

12. BASIS FOR OPINION IN 9 OR 10 ABOVE

	ODOR OF ALCOHOL		TRUCULENT		UNCOORDINATED		CLINICAL TESTING WITH INTOXICATION LEVEL OF: None done
	STAGGERING		UNSTEADY		HICCOUGHING		
	SEMICONSCIOUS		INCOHERENT	X	NORMAL		

13. ALLEGED CIRCUMSTANCES INITIALLY REPORTED AND SOURCE OF INFORMATION
Part of DOOR's finger was cut off in the Naval Base Hobby Shop. Reported by LN2 Hermetically Sealed JAMB, USN, 345-67-8911, who brought DOOR to hospital.

14. IT IS POSSIBLE THAT THE FOLLOWING DISABILITY MAY RESULT
☒ PERMANENT PARTIAL ☐ PERMANENT TOTAL
☐ NONE (NOTE)

15. ESTIMATED LOSS OF TIME FROM DUTY AS A RESULT OF INJURY OR DATE OF RETURN TO DUTY
75 days

16. BASED ON THE ABOVE, THE FOLLOWING FINDING IS RECOMMENDED: IN LINE OF DUTY. NOT DUE TO OWN MISCONDUCT.

17. TYPED NAME AND GRADE OF MEDICAL OFFICER Harvey G. AESCULAPIUS, LT, MC, USN	SIGNATURE OF MEDICAL OFFICER	DATE 3 June 1976

NOTE: None entry in Section 14 to be checked only when form is used as a summary report in accordance with section 0814b.

PART II – TO BE COMPLETED BY COMMANDING OFFICER

18. SERVICE MEMBER INJURED WAS

☐ ON DUTY ☒ ON AUTHORIZED LIBERTY OR LEAVE ☐ AN UNAUTHORIZED ABSENTEE ☐ DRILLING

19. AS A RESULT OF MY INVESTIGATION I HAVE DETERMINED THE CIRCUMSTANCES TO BE (USE ADDITIONAL SHEETS AS REQUIRED.)

Seaman DOOR was cutting a slight bow in a piece of birch stock, 2" thick by 4" wide by 2-1/2' long. This was to be one of the top sides of a glass-topped coffee table. He was guiding the wood with his right hand and pushing from behind with his left, following a pencil line he had scribed on the edge of the wood. He was holding the wood between the thumb and index finger of his right hand, with his middle finger on back. Someone shouted something at the end of the room, and both DOOR and H. S. JAMB, who was working on a jointer-planer behind DOOR, looked in that direction. JAMB pulled backward a five foot length of 2 x 4, which he had not started to push through the planer, striking DOOR's right elbow and pushing the end of DOOR's right hand middle finger into the moving bandsaw blade.

20. IT IS THE OPINION OF THE UNDERSIGNED THAT THE INJURY IN QUESTION WAS INCURRED IN THE LINE OF DUTY AND NOT AS THE RESULT OF SUBJECT MAN'S OWN MISCONDUCT.

21.	COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION – IF LATTER, SO INDICATE		
	TYPED NAME AND GRADE A. B. SEE, CAPT, USN	SIGNATURE	DATE 10 June 1976

22. ACTION OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION

FROM Commandant, Fifth Naval District DATE 15 June 1976

TO: Judge Advocate General of the Navy

It has been determined that the injury in question was incurred in the line of duty and not due to misconduct.

I. C. ALL

SIGNATURE AND TYPED NAME OF OFFICER EXERCISING GCM AUTHORITY (OR ONE AUTHORIZED TO SIGN BY DIRECTION)

OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

MEMORANDUM

From: Judge Advocate General
To: Central Records Section

1. Forwarded.

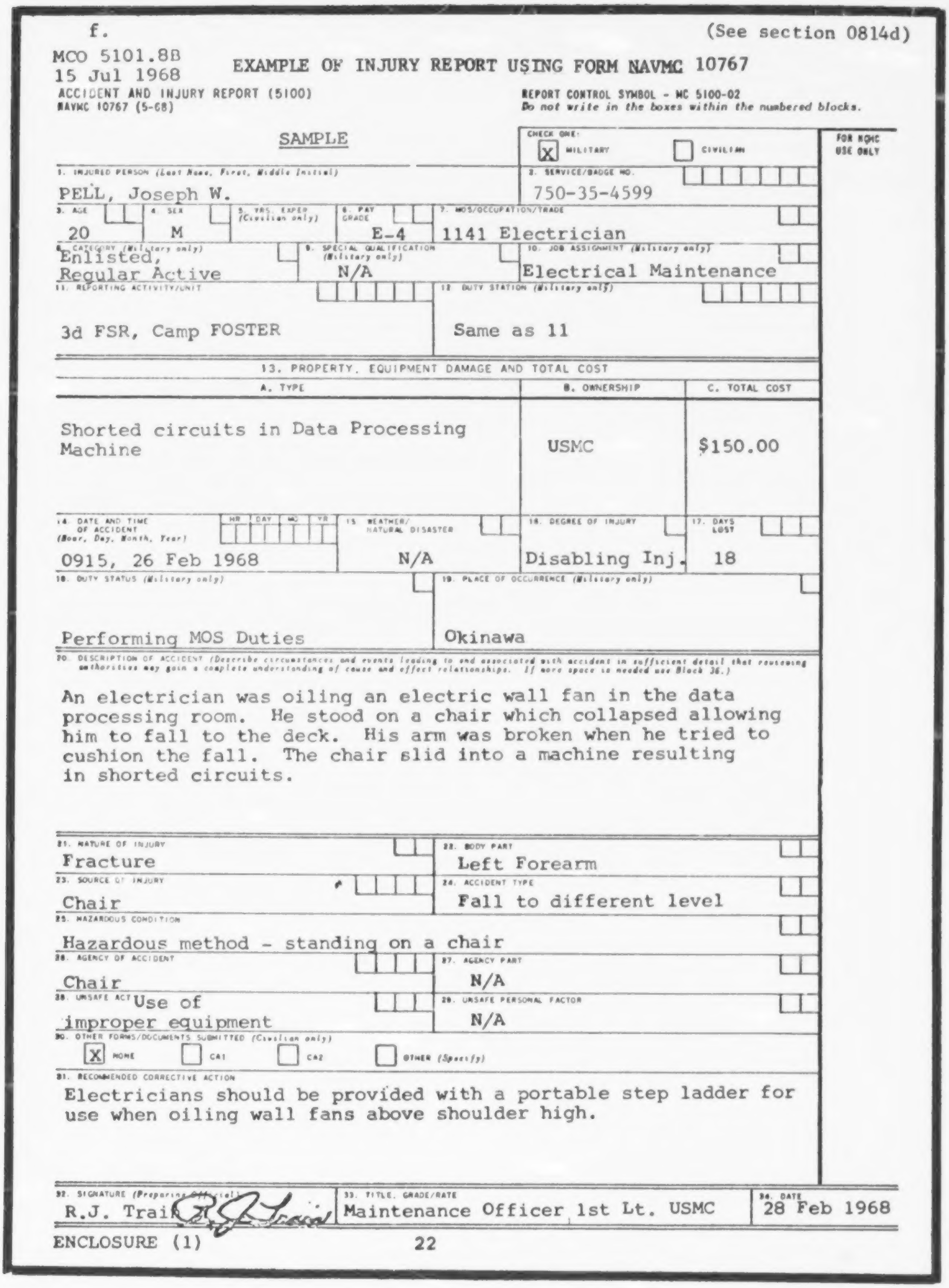
2. This investigation has been reviewed and it is found to be in substantial compliance with the JAG Manual. No further action required. The general court-martial authority has determined that the member's injuries were incurred in the line of duty and not due to the members own misconduct.

3. The foregoing determinations are approved by the Judge Advocate General.

I. M. BLIND

By direction

NAVJAG 5800/15 (REV. 3-77) (BACK)



f. (See section 0814d)

MCO 5101.8B
15 Jul 1968

EXAMPLE OF INJURY REPORT USING FORM NAVMC 10767

ACCIDENT AND INJURY REPORT (5100)
NAVMC 10767 (5-68)

REPORT CONTROL SYMBOL - MC 5100-02
Do not write in the boxes within the numbered blocks.

SAMPLE

CHECK ONE: ☒ MILITARY ☐ CIVILIAN

FOR HQMC USE ONLY

1. INJURED PERSON *(Last Name, First, Middle Initial)* PELL, Joseph W.			2. SERVICE/BADGE NO. 750-35-4599	
3. AGE 20	4. SEX M	5. YRS. EXPER *(Civilian only)*	6. PAY GRADE E-4	7. MOS/OCCUPATION/TRADE 1141 Electrician
8. CATEGORY *(Military only)* Enlisted, Regular Active	9. SPECIAL QUALIFICATION *(Military only)* N/A		10. JOB ASSIGNMENT *(Military only)* Electrical Maintenance	
11. REPORTING ACTIVITY/UNIT 3d FSR, Camp FOSTER			12. DUTY STATION *(Military only)* Same as 11	

13. PROPERTY, EQUIPMENT DAMAGE AND TOTAL COST

A. TYPE	B. OWNERSHIP	C. TOTAL COST
Shorted circuits in Data Processing Machine	USMC	$150.00

14. DATE AND TIME OF ACCIDENT *(Hour, Day, Month, Year)* HR DAY MO YR 0915, 26 Feb 1968	15. WEATHER/NATURAL DISASTER N/A	16. DEGREE OF INJURY Disabling Inj.	17. DAYS LOST 18
18. DUTY STATUS *(Military only)* Performing MOS Duties		19. PLACE OF OCCURRENCE *(Military only)* Okinawa	

20. DESCRIPTION OF ACCIDENT *(Describe circumstances and events leading to and associated with accident in sufficient detail that reviewing authorities may gain a complete understanding of cause and effect relationships. If more space is needed use Block 36.)*

An electrician was oiling an electric wall fan in the data processing room. He stood on a chair which collapsed allowing him to fall to the deck. His arm was broken when he tried to cushion the fall. The chair slid into a machine resulting in shorted circuits.

21. NATURE OF INJURY Fracture	22. BODY PART Left Forearm
23. SOURCE OF INJURY Chair	24. ACCIDENT TYPE Fall to different level
25. HAZARDOUS CONDITION Hazardous method - standing on a chair	
26. AGENCY OF ACCIDENT Chair	27. AGENCY PART N/A
28. UNSAFE ACT Use of improper equipment	29. UNSAFE PERSONAL FACTOR N/A

30. OTHER FORMS/DOCUMENTS SUBMITTED *(Civilian only)*
☒ NONE ☐ CA1 ☐ CA2 ☐ OTHER *(Specify)*

31. RECOMMENDED CORRECTIVE ACTION

Electricians should be provided with a portable step ladder for use when oiling wall fans above shoulder high.

32. SIGNATURE *(Preparing Official)* R.J. Train R.J. Train	33. TITLE, GRADE/RATE Maintenance Officer 1st Lt. USMC	34. DATE 28 Feb 1968

ENCLOSURE (1) 22

g. Sample letter transmitting NAVMC 10767. (See section 0814c.)

From: Commanding General, Third Marine Division, FMF, Pacific
To: Judge Advocate General of the Navy

Subj: Injuries to CPL Joseph W. PELL, USMC, 750-35-4599, report of accidental injuries, 0915, 20 February 1968

Ref: (a) Section 0814c, Manual of the Judge Advocate General

Encl: (1) Duplicate original Accident and Injury Report (5100) NAVMC 10969, submitted by 3d FSR, Camp Foster

1. Enclosure (1) has been reviewed and is forwarded in accordance with reference (a).

2. PELL sustained a simple fracture of the distal portion of the left radius as a result of this incident. It is the opinion of the medical officer, Harvey G. Aesculcapus, LT, MC, USN, 542438, that subject member may have a permanent partial disability as a result of this injury. He and the commanding officer concur that the injury was sustained in line of duty and not as a result of the member's own misconduct.

S. O. Tripoli
S. O. TRIPOLI
By direction

j. Sample of recommendation by examining judge advocate

See section 0814e

From: ______________________________, JAGC, USN

To: Commanding Officer, ______________________________

Subj: Report of injury to ____________________ in __________

1. I have examined subject report.

2. (Comment.)

3. A JAG Manual investigation (is) (is not) recommended.

____

____________________, JAGC, USN

NAVJAG 5800/15
(REV. 3-77)
S/N 0105 LF-105-8075

INJURY REPORT

(See section 0814)

THIS FORM IS TO BE USED ONLY FOR NOT MISCONDUCT AND IN LINE OF DUTY DETERMINATIONS AND IN ACCORDANCE WITH CHAPTER VIII, JAG MANUAL. SUBMIT TYPEWRITTEN ORIGINAL TO THE JUDGE ADVOCATE GENERAL VIA OFFICER EXERCISING GCM AUTHORITY.

RCS JAG 5800-19

FROM: (NAME OF REPORTING COMMAND)
Naval Station, Washington, D. C. 20390

TO
Judge Advocate General, Navy Department, Washington, DC 20370

VIA: (OFFICER EXERCISING GCM AUTHORITY)
Commandant, Naval District Washington 20374

1. NAME OF INJURED SERVICE MEMBER Willow Holly OAK	2. SSN 123-45-6711	3. GRADE IC3	4. SERVICE USN

5. DATE AND PLACE OF INCIDENT CAUSING INJURY
10 July 1969 Woodbridge, Virginia

PART I – TO BE COMPLETED BY MEDICAL OFFICER

6. FIRST SEEN BY MEDICAL OFFICER	DATE 10 July 69	TIME 0600	PLACE NNMC, Bethesda, Md.

7. DIAGNOSIS
Comminuted fracture left humerus and left scapula, contusions head and thorax

8. PROGNOSIS
Good

CONDITION OF INDIVIDUAL AT TIME OF EXAMINATION

9. UNDER INFLUENCE OF
☐ ALCOHOL ☐ BARBITURATES ☐ NARCOTICS
☐ OTHER (SPECIFY)

10.
☒ NOT UNDER INFLUENCE OF ANY LISTED IN ITEM 9

11.
☐ UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION

12. BASIS FOR OPINION IN 9 OR 10 ABOVE

	ODOR OF ALCOHOL		TRUCULENT		UNCOORDINATED		CLINICAL TESTING WITH INTOXICATION LEVEL OF: 0.00%
	STAGGERING		UNSTEADY		HICCOUGHING		
	SEMICONSCIOUS		INCOHERENT	X	NORMAL		

13. ALLEGED CIRCUMSTANCES INITIALLY REPORTED AND SOURCE OF INFORMATION
OAK was involved in a traffic accident while driving a military vehicle. Reported by Virginia State Police.

14. IT IS POSSIBLE THAT THE FOLLOWING DISABILITY MAY RESULT
☒ PERMANENT PARTIAL ☐ PERMANENT TOTAL
☐ NONE (NOTE)

15. ESTIMATED LOSS OF TIME FROM DUTY AS A RESULT OF INJURY OR DATE OF RETURN TO DUTY
3 months

16. BASED ON THE ABOVE, THE FOLLOWING FINDING IS RECOMMENDED: IN LINE OF DUTY, NOT DUE TO OWN MISCONDUCT.

17. TYPED NAME AND GRADE OF MEDICAL OFFICER Galen M. CADUCEUS, CDR, MC, USN	SIGNATURE OF MEDICAL OFFICER	DATE 16 July 1969

NOTE: None entry in section 14 to be checked only when form is used as a summary report in accordance with section 0814b.

PART II – TO BE COMPLETED BY COMMANDING OFFICER

18. SERVICE MEMBER INJURED WAS

☒ ON DUTY ☐ ON AUTHORIZED LIBERTY OR LEAVE ☐ AN UNAUTHORIZED ABSENTEE ☐ DRILLING

19. AS A RESULT OF MY INVESTIGATION I HAVE DETERMINED THE CIRCUMSTANCES TO BE: (USE ADDITIONAL SHEETS AS REQUIRED.)

> Pursuant to section 0814 section 19 need not be completed because form 91A provides necessary information

20. IT IS THE OPINION OF THE UNDERSIGNED THAT THE INJURY IN QUESTION WAS INCURRED IN THE LINE OF DUTY AND NOT AS THE RESULT OF SUBJECT'S OWN MISCONDUCT

21. COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION – IF LATTER, SO INDICATE)

TYPED NAME AND GRADE	SIGNATURE	DATE
Redwood E. Sequoia, CAPT, USN		1 Aug 1969

22. ACTION OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION

FROM Commandant, Naval District Washington DATE 15 Aug 1969

TO Judge Advocate General of the Navy

It has been determined that the injury in question was incurred in the line of duty and not due to misconduct.

I. M. FAIR

SIGNATURE AND TYPED NAME OF OFFICER EXERCISING GCM AUTHORITY (OR ONE AUTHORIZED TO SIGN BY DIRECTION), NAVAL DISTRICT, WASHINGTON

OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

MEMORANDUM

From: Judge Advocate General
To: Central Records Section

1. Forwarded.

2. This investigation has been reviewed and it is found to be in substantial compliance with the JAG Manual. No further action required. The general court-martial authority has determined that the member's injuries were incurred in the line of duty and not due to the member's own misconduct.

3. The foregoing determinations are approved by the Judge Advocate General.

O. W. HOLMES

By direction

NAVJAG 5800/15 (REV. 3-77) (BACK)

(See section 0814)

13. CONDITION OF DRIVER AND PEDESTRIAN

Check for each person

FED 2 PED

☒ ☒ ☐ 1A. HAD NOT BEEN DRINKING
☐ ☐ ☐ 1B. HAD BEEN DRINKING, IF SO:
☒ ☐ ☐ 2. ABILITY IMPAIRED
☐ ☒ ☐ 3. ABILITY NOT IMPAIRED
☐ ☐ ☐ 4. NOT KNOWN WHETHER IMPAIRED

Check one or more

FED 2 PED

☐ ☐ ☐ 5. PHYSICAL DEFECT
☐ 6. OTHER HANDICAPS, CARRYING BUNDLES, UMBRELLAS, ETC.
☐ ☐ 7. SLEEPY, FATIGUED, ETC.
☐ ☐ 8. APPARENTLY ASLEEP
☐ ☐ ☐ 9. APPARENTLY NORMAL

14. CONDITION OF VEHICLE

Check one or more for each vehicle

FED 2

☐ ☐ 1. DEFECTIVE BRAKES
☐ ☐ 2. ONE HEADLIGHT OUT
☐ ☐ 3. BOTH HEADLIGHTS OUT
☐ ☐ 4. TAILLIGHT OUT OR OBSCURED
☐ ☐ 5. DIM, COWL, OR FENDER LIGHTS ONLY
☐ ☐ 6. SIGNAL LIGHTS DEFECTIVE
☐ ☐ 7. OTHER LIGHTS OR REFLECTORS DEFECTIVE

FED 2

☐ ☐ 8. TIRE BLEW OUT
☒ ☐ 9. DEFECTIVE STEERING MECHANISM
☐ ☐ 10. NO APPARENT DEFECTS
☐ ☐ 11. OTHER DEFECTS (Specify)

15. VISION OBSCURED BY

Check where applicable

FED 2

☐ ☐ 1. RAIN, SNOW, ETC., ON WINDSHIELD
☐ ☐ 2. CRACKED WINDSHIELD
☐ ☐ 3. DIRTY WINDSHIELD, WINDOWS
☐ ☐ 4. WINDSHIELD, WINDOWS NOT GLASS
☐ ☐ 5. TREES, CROPS, ETC.
☐ ☐ 6. BUILDING

FED 2

☐ ☐ 7. EMBANKMENT
☐ ☐ 8. SIGNBOARDS
☐ ☐ 9. PARKED VEHICLE
☐ ☐ 10. MOVING VEHICLE
☐ ☐ 11. OTHER (Specify)

16. ROAD CHARACTER

Check one in each section

☒ 1. STRAIGHT
☐ 2. SHARP CURVE OR TURN
☐ 3. OTHER CURVES

☐ 1. LEVEL
☐ 2. UP HILL
☐ 3. HILL CREST
☐ 4. DOWN HILL

17. ROAD SURFACE

Check one

☒ 1. CONCRETE
☐ 2. BRICK
☐ 3. BLACK TOP
☐ 4. GRAVEL, SAND, OR DIRT—OILED
☐ 5. GRAVEL, SAND, OR DIRT—UNOILED
☐ 6. OTHER (Specify)

18. ROAD CONDITION

Check one

☒ 1. DRY
☐ 2. WET
☐ 3. MUDDY
☐ 4. SNOWY
☐ 5. ICY

Check one or more

☐ 6. LOOSE MATERIAL ON SURFACE
☐ 7. HOLES, DEEP RUTS
☐ 8. DEFECTIVE SHOULDERS
☐ 9. NO DEFECTS
☐ 10. OTHER DEFECTS (Specify)

WAS ROAD UNDER CONSTRUCTION OR REPAIR?

☐ YES ☒ NO

19. TRAFFIC CONTROL

Check one or more

Functioning / Not Functioning

☐ ☐ 1. R. R. CROSSING GATES
☐ ☐ 2. R. R. AUTOMATIC SIGNAL
☐ ☐ 3. OFFICER OR WATCHMAN
☐ ☐ 4. STOP AND GO LIGHT
☐ ☐ 5. STOP SIGN
☐ ☐ 6. WARNING SIGN OR SIGNAL
☐ ☐ 7. FLAGS OR FLARES
☒ 8. NO CONTROL PRESENT

20. DRIVER'S ACTIONS

Check one for each driver

FED 2

☐ ☐ 1. MAKING RIGHT TURN
☐ ☐ 2. MAKING LEFT TURN
☐ ☐ 3. MAKING U TURN
☐ ☒ 4. GOING STRAIGHT AHEAD
☐ ☐ 5. SLOWING DOWN, STOPPING
☐ ☐ 6. OVERTAKING, PASSING
☐ ☐ 7. FORWARD FROM PARKING SPACE

FED 2

☐ ☐ 8. BACKWARD FROM PARKING SPACE
☐ ☐ 9. OTHER BACKING
☐ ☐ 10. STOPPED IN TRAFFIC LANE
☐ ☐ 11. OTHER (Specify)

Check if applicable:

FED 2

☐ ☐ 12. SKIDDING
☐ ☐ 13. AVOIDING VEHICLE, OBJECT, OR PEDESTRIAN
☐ ☐ 14. EMERGING FROM ALLEY OR DRIVEWAY

FED 2

☐ ☐ 15. DISABLED VEHICLE, PARKED
☐ ☐ 16. GAVE WARNING (Horn, Signal, Indicator)

21. VIOLATIONS

Check one or more

FED 2

☐ ☐ 1. EXCEEDING LAWFUL SPEED
☐ ☐ 2. DID NOT HAVE RIGHT-OF-WAY
☐ ☐ 3. ON WRONG SIDE OF ROAD
☐ ☐ 4. DROVE THROUGH SAFETY ZONE
☐ ☐ 5. PASSING STANDING STREETCAR
☐ ☐ 6. PASSING ON HILL
☐ ☐ 7. PASSING ON CURVE
☐ ☐ 8. CUTTING IN
☐ ☐ 9. FOLLOWING TOO CLOSELY
☐ ☐ 10. FAILURE TO SIGNAL OR IMPROPER SIGNAL
☐ ☐ 11. WIDE RIGHT TURN
☐ ☐ 12. CUT CORNER ON LEFT TURN

FED 2

☐ ☐ 13. TURN FROM WRONG LANE
☐ ☐ 14. DISREGARDED STOP SIGN
☐ ☐ 15. DISREGARDED WARNING SIGN OR SIGNAL
☐ ☐ 16. DISREGARDED STOP AND GO LIGHT
☐ ☐ 17. DISREGARDED POLICE OFFICER
☐ ☐ 18. IMPROPER STARTING FROM PARKED POSITION
☐ ☐ 19. IMPROPER PARKING
☐ ☐ 20. NO IMPROPER DRIVING INDICATED
☒ ☐ 21. OTHER IMPROPER ACTION (Specify)

crossed median strip divided highway

22. ROAD WIDTHS AND LANES

WIDTH OF ROAD OR PAVEMENT: 100
NUMBER OF LANES: 4
WERE LANES MARKED? yes
WERE LANES SEPARATED? yes
BY WHAT? 20 foot grass median strip

23. POLICE ACTION, IF ANY

CHARGE: No charges
NAME OF PERSON CHARGED:
NAME, BADGE NUMBER, AND DEPT. OF POLICE OFFICER:

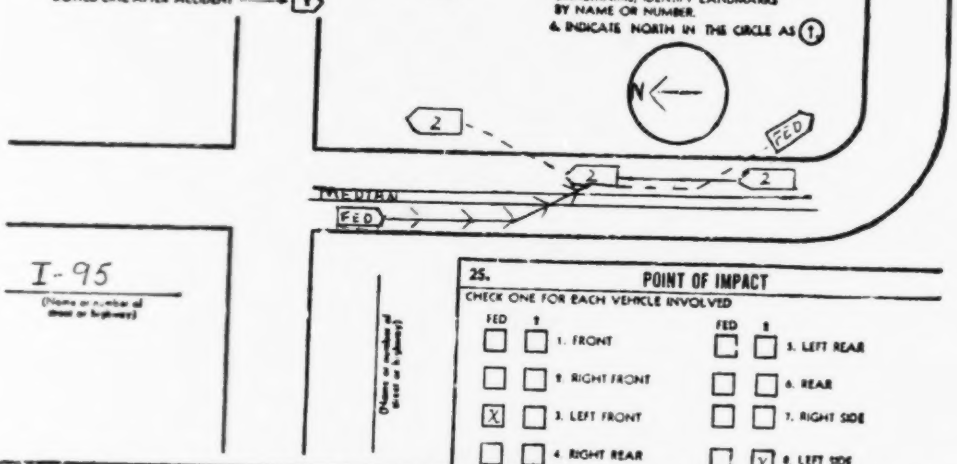
(See section 0814)

24.

INDICATE ON THIS DIAGRAM HOW ACCIDENT HAPPENED

Use one of these outlines to sketch the scene of the accident, writing in street or highway names or numbers.

1. NUMBER EACH VEHICLE AND SHOW DIRECTION OF TRAVEL BY ARROW →FED ◁1←
2. USE SOLID LINE TO SHOW PATH BEFORE ACCIDENT →1 DOTTED LINE AFTER ACCIDENT ⇢1
3. SHOW PEDESTRIAN BY: →O
4. SHOW RAILROAD BY: ┼┼┼┼┼┼
5. SHOW DISTANCE AND DIRECTION TO LANDMARKS; IDENTIFY LANDMARKS BY NAME OR NUMBER.
6. INDICATE NORTH IN THE CIRCLE AS ↑


N
2
FED
2
2
MEDIAN
FED
I-95
(Name or number of street or highway)
(Name or number of street or highway)

25. **POINT OF IMPACT**

CHECK ONE FOR EACH VEHICLE INVOLVED

FED	2		FED	2	
☐	☐	1. FRONT	☐	☐	5. LEFT REAR
☐	☐	2. RIGHT FRONT	☐	☐	6. REAR
☒	☐	3. LEFT FRONT	☐	☐	7. RIGHT SIDE
☐	☐	4. RIGHT REAR	☐	☒	8. LEFT SIDE

26. **DESCRIBE WHAT HAPPENED**

REFER TO VEHICLES BY "FED" AND "2"

OAK, an Interior Communication Electrician Third Class, U.S. Navy, 123 45 67, was returning to the Naval Recruiting Station, Richmond, Va., a station wagon which had been given a periodic preventive maintenance check. The Federal vehicle swerved without warning, crossing the median strip, and striking the left side of vehicle no. 2, proceeding in the opposite direction. Later examination of the Federal vehicle disclosed that a king pin had been lost, due to defective construction of the front end assembly.

27. SIGNATURE OF FEDERAL DRIVER	TITLE	DATE
/s/ Willow H. OAK	IC3, 123 45 67	11 June 1969

28. **STATEMENT OF REVIEWING OFFICIAL**

WAS THE DRIVER ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT? ☒ YES ☒ NO

STATE BASIS FOR ANSWER

OAK had been directed to return vehicle in early evening of 9 June, but this was not a material factor in accident.

WHAT CAUSED THE ACCIDENT?

Defective front end assembly; left king pin

HOW COULD IT HAVE BEEN PREVENTED?

Better attention during lubrication, chassis lubricant not getting to king pin fitting

WHAT ACTION HAS BEEN TAKEN?

Maintenance men cautioned to assure grease getting to all fittings

USE THIS SPACE TO SHOW CONSEQUENCES OF ACCIDENT AFFECTING AGENCY PERSONNEL REPORTED IN SECTION 7.

A. ☒ MILITARY PERSONNEL ☐ CIVILIAN PERSONNEL

PROBABLE DISABILITY: yes

DATE STOPPED WORK: 6/10/69

DATE RESUMED WORK: 7/18/69

NATURE OF INJURY AND PART OF BODY: fx left arm, contusions of head, thorax

B. ☐ MILITARY PERSONNEL ☐ CIVILIAN PERSONNEL

PROBABLE DISABILITY:

DATE STOPPED WORK:

DATE RESUMED WORK:

NATURE OF INJURY AND PART OF BODY:

SIGNATURE OF REVIEWING OFFICIAL	TITLE (Civilian or military)	DATE
Redwood E. Sequoia	CAPT, U.S.N. CO, USNS, Washington, D.C.	20 June 1969

j. Sample of recommendation by examining judge advocate

See section 0814e

From: ______________________________, JAGC, USN

To: Commanding Officer, ______________________

Subj: Report of injury to ____________ in ________

1. I have examined subject report.

2. (Comment.)

3. A JAG Manual investigation (is) (is not) recommended.

____

________________, JAGC, USN

INJURY REPORT

(See section 0814)

NAVJAG 5800/15
(REV. 3-77)
S/N 0105-LF-105-8075

THIS FORM IS TO BE USED ONLY FOR NOT MISCONDUCT AND IN LINE OF DUTY DETERMINATIONS AND IN ACCORDANCE WITH CHAPTER VIII, JAG MANUAL. SUBMIT TYPEWRITTEN ORIGINAL TO THE JUDGE ADVOCATE GENERAL VIA OFFICER EXERCISING GCM AUTHORITY.

RCS JAG 5800-19

FROM: (NAME OF REPORTING COMMAND)
Naval Station, Washington, D. C. 20390

TO:
Judge Advocate General, Navy Department, Washington, DC 20370

VIA: (OFFICER EXERCISING GCM AUTHORITY)
Commandant, Naval District Washington 20374

1. NAME OF INJURED SERVICE MEMBER	2. SSN	3. GRADE	4. SERVICE
Willow Holly OAK	123-45-6711	IC3	USN

5. DATE AND PLACE OF INCIDENT CAUSING INJURY
10 July 1969 Woodbridge, Virginia

PART I – TO BE COMPLETED BY MEDICAL OFFICER

6. FIRST SEEN BY MEDICAL OFFICER	DATE 10 July 69	TIME 0600	PLACE NNMC, Bethesda, Md.

7. DIAGNOSIS
Comminuted fracture left humerus and left scapula, contusions head and thorax

8. PROGNOSIS
Good

CONDITION OF INDIVIDUAL AT TIME OF EXAMINATION

9. UNDER INFLUENCE OF
☐ ALCOHOL ☐ BARBITURATES ☐ NARCOTICS
☐ OTHER (SPECIFY)

10.
☒ NOT UNDER INFLUENCE OF ANY LISTED IN ITEM 9

11.
☐ UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION

12. BASIS FOR OPINION IN 9 OR 10 ABOVE

	ODOR OF ALCOHOL		TRUCULENT		UNCOORDINATED		CLINICAL TESTING WITH INTOXICATION LEVEL OF: 0.00%
	STAGGERING		UNSTEADY		HICCOUGHING		
	SEMICONSCIOUS		INCOHERENT	X	NORMAL		

13. ALLEGED CIRCUMSTANCES INITIALLY REPORTED AND SOURCE OF INFORMATION
OAK was involved in a traffic accident while driving a military vehicle.
Reported by Virginia State Police.

14. IT IS POSSIBLE THAT THE FOLLOWING DISABILITY MAY RESULT
☒ PERMANENT PARTIAL ☐ PERMANENT TOTAL
☐ NONE (NOTE)

15. ESTIMATED LOSS OF TIME FROM DUTY AS A RESULT OF INJURY OR DATE OF RETURN TO DUTY
3 months

16. BASED ON THE ABOVE, THE FOLLOWING FINDING IS RECOMMENDED: IN LINE OF DUTY. NOT DUE TO OWN MISCONDUCT.

17. TYPED NAME AND GRADE OF MEDICAL OFFICER	SIGNATURE OF MEDICAL OFFICER	DATE
Galen M. CADUCEUS, CDR, MC, USN		16 July 1969

NOTE: None entry in section 14 to be checked only when form is used as a summary report in accordance with section 0814b.

PART II — TO BE COMPLETED BY COMMANDING OFFICER

18. SERVICE MEMBER INJURED WAS

☒ ON DUTY ☐ ON AUTHORIZED LIBERTY OR LEAVE ☐ AN UNAUTHORIZED ABSENTEE ☐ DRILLING

19. AS A RESULT OF MY INVESTIGATION I HAVE DETERMINED THE CIRCUMSTANCES TO BE (USE ADDITIONAL SHEETS AS REQUIRED.)

Pursuant to section 0814 section 19 need not be completed because form 91A provides necessary information

20. IT IS THE OPINION OF THE UNDERSIGNED THAT THE INJURY IN QUESTION WAS INCURRED IN THE LINE OF DUTY AND NOT AS THE RESULT OF SUBJECT'S OWN MISCONDUCT

21. COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION — IF LATTER, SO INDICATE)

TYPED NAME AND GRADE	SIGNATURE	DATE
Redwood E. Sequoia, CAPT, USN		1 Aug 1969

22. ACTION OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION:

FROM: Commandant, Naval District Washington DATE: 15 Aug 1969

TO: Judge Advocate General of the Navy

It has been determined that the injury in question was incurred in the line of duty and not due to misconduct.

I. M. FAIR

SIGNATURE AND TYPED NAME OF OFFICER EXERCISING GCM AUTHORITY (OR ONE AUTHORIZED TO SIGN BY DIRECTION), NAVAL DISTRICT, WASHINGTON

OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

MEMORANDUM

From: Judge Advocate General
To: Central Records Section

1. Forwarded.

2. This investigation has been reviewed and it is found to be in substantial compliance with the JAG Manual. No further action required. The general court-martial authority has determined that the member's injuries were incurred in the line of duty and not due to the member's own misconduct.

3. The foregoing determinations are approved by the Judge Advocate General.

O. W. HOLMES

By direction

NAVJAG 5800/15 (REV. 3-77) (BACK)

j. Sample of recommendation by examining judge advocate

See section 0814e

From: ______________________________, JAGC, USN

To: Commanding Officer, ________________________

Subj: Report of injury to ____________ in _________

1. I have examined subject report.

2. (Comment.)

3. A JAG Manual investigation (is) (is not) recommended.

____

________________, JAGC, USN

Agreed English/French Texts

NATO STANDARDIZATION AGREEMENT
(STANAG)

COMBINED INVESTIGATION OF MARITIME INCIDENTS

Annex A: Conduct of a Combined Board of Inquiry

Related Documents: STANAG 3531 FS Investigation of Aircraft/Missile Accidents/Incidents

OBJECT

1. The aim of this agreement is to lay down procedures which may be followed in the event of maritime incidents involving units or personnel of two or more NATO nations.

AGREEMENT

2. Participating nations agree to three alternative procedures which should be used for the conduct of inquiries into such maritime incidents. The purpose of these inquiries would be to ascertain the facts, to reach conclusions as to the direct and indirect causes of the event and, if needed, to make recommendations to prevent a recurrence.

3. Nations retain all their existing rights to conduct their own investigations in accordance with their own laws or regulations.

4. The alternatives are:

   a. Procedure A. Combined Board of Inquiry.

   b. Procedure B. A National Inquiry Attended by Witnesses and/or Observers from Other Nations.

   c. Procedure C. Independent National Inquiries Co-ordinated by the Presidents of those Inquiries.

The Major NATO Commander or Major Subordinate Commander under whose command the units or personnel concerned were operating should recommend the procedure he deems most appropriate for each specific incident. Nations are free to accept the NATO commanders' recommendation or to choose an alternative procedure in consultation with each other. Where there is no common NATO commander, the procedures to be used should be determined and initiated as agreed between the nations concerned.

Procedure A -- Combined Board of Inquiry

5. A Combined Board of Inquiry will be convened by the appropriate Major NATO or Major NATO Subordinate Commander as agreed by the nations concerned. The convening authority will appoint officers to form the Combined Board, which shall be composed of a minimum of 3 officers, with each nation involved in the incident represented. The President of the Board is to be superior in rank and, if practicable, the other members are to be equal or superior in rank to any person who may be affected by the findings of the Board.

6. Combined Boards are to be held in private and the record of proceedings as well as the subsequent report shall be considered to be privileged to the fullest extent practicable. Information concerning the proceedings, testimony, findings, conclusions, and recommendations shall not be released publicly without the agreement of all nations involved.

7. The conduct of the inquiry is to be in accordance with Annex A to this STANAG.

8. The report of the Board of Inquiry is to be forwarded by the President to the convening authority, copies being sent direct to the Ministries of Defense of the nations involved. A verbatim transcript of all evidence and copies of documents accepted in evidence by the Board are to be included.

9. The costs will be met in accordance with established NATO procedures, i.e., administrative and transportation costs are the responsibility of the convening authority and per diem expenses are a national responsibility.

Procedure B - A National Inquiry Attended by Witnesses and/or From Other Nations

10. Boards of Inquiry will be convened by the appropriate national authorities, who will request the attendance of witnesses from other nations. Such witnesses may give evidence under the laws and procedures of the convening nation or if this is not acceptable to the nations involved, may give evidence under the rules for witnesses at a Combined Board (Annex A). Observers from the nations concerned may be present during the relevant parts of the inquiry.

11. Unless otherwise agreed, the evidence of each foreign witness, and any findings which affect him, are to be forwarded to the national concerned. Evidence and findings of concern to NATO shall be forwarded to the relevant NATO Commander by the national authorities.

12. The costs of attendance of foreign witnesses shall be met by the nation convening the inquiry.

Procedure C - Independent National Inquiries Co-ordinated by the Presidents of the Inquiries

13. Inquiries under this procedure consist of two phases. In the first phase, each National authority concerned appoints its own Board of Inquiry acting in accordance with national rules and regulations and hearing evidence only from its own nationals. During this phase the Presidents of the Boards of Inquiry shall exchange initial national reports of the incident. If they consider it necessary, the Presidents may meet in order to obtain or exchange any further information they deem appropriate to the establishment of the facts.

14. In the second phase, the reports drawn up by the national Boards of Inquiry are compared by a Combined Commission composed of the Presidents of the National Boards with any other members agreed by the nations concerned. The Combined Commission then prepares a summary showing where the reports agree and where they differ. The summary is sent to the Ministries of Defense of the nations involved, and if applicable, to the NATO authorities concerned.

15. The combined summary and any information exchanged between the Presidents of the National Boards of Inquiry are not to be released without consent of all the nations concerned.

IMPLEMENTATION OF THE AGREEMENT

16. This STANAG is considered to be implemented when nations and Major NATO commanders have issued the necessary orders/instructions putting the procedures detailed in this agreement into effect.

CONDUCT OF A COMBINED BOARD OF INQUIRY

Terms of Reference

1. The convening authority shall provide a Board of Inquiry with a convening order which shall contain full and specific instructions to:

   a. The composition of the board.

   b. The place and time at which the Board shall assemble, unless the President is directed to issue his own orders in this respect.

   c. The investigation required.

   d. The matters on which findings or recommendations are required.

   e. The security classification of the matter to be investigated.

   f. Responsibility for providing the necessary administrative and clerical support for the Board.

   A draft Convening Signal is at Appendix 1.

Responsibilities of the Board

2. The Board shall ascertain the facts, reach conclusions as to the direct and indirect causes of the event and make recommendations to prevent a recurrence.

3. The Board may invite a person to:

   a. attend as a witness, or

   b. Make a statement in writing.

   Persons will be advised of their rights as witnesses as set out in Paragraph 9 below.

4. A Board of Inquiry is to maintain a verbatim record of all the proceedings.

5. The Board may receive any evidence which they consider relevant whether or not it would be admissible in a civil or criminal court.

Procedures

6. Evidence will normally be received in French or English; however, interpreters will be made available when required.

7. Evidence before a Board of Inquiry shall not be taken on oath, unless the national procedures of a particular witness so require. A witness testifying on oath before a Board shall take the oath recognized by his belief or national practice.

8. Witnesses shall be cautioned that the evidence which they give is, like the report of the Board, privileged and they should not discuss it outside the confines of the Board.

Rights of Persons Who May be Affected

9. A witness or other person designated by the convening authority or the President as someone who may be affected by the findings of the Board shall be advised of and accorded the following rights:

a. To be given notice of the proceedings.

b. To be present during the proceedings, but not when the investigation is closed for deliberation.

c. To be represented by counsel or adviser.

d. To testify as a witness.

e. To introduce evidence.

f. To cross-examine witnesses.

g. To refuse to answer any question the answer to which would incriminate himself.

h. To make a written statement to be included in the records of proceedings.

i. To address the Board at the conclusion of presentation of evidence.

Custody of Evidence

10. The authority convening the Board is to issue orders for the preservation and custody of evidence, such as charts, logs, signal messages, etc. until they can be delivered to the Board.

DRAFT CONVENING SIGNAL

From: (To be inserted)

To: (Ships and authorities concerned)

Info: (MODs of Countries concerned)
(Major NATO Commanders concerned)
(NATO Subordinate Commander concerned)

Classification: (To be inserted)

DIC: (To be allocated when appropriate)

Subject: Combined Board of Inquiry

Reference: A. STANAG 1179 (NOTAL)

1. A Combined Board of Inquiry comprising the following officers is to assemble on board (ship/place) at (date/time/zone) or as directed by the President:

a. (President)

b.

c.

et seq

2. The Board is to inquire into the circumstances attending the . . . (scope of inquiry). The classification is . . . .

3. The Board is to be conducted in accordance with STANAG 1179 Procedure ALPHA (and is to make recommendations to prevent a recurrence).

4. The following documents/exhibits are to be impounded and forwarded to the President. Supplementary instructions are to be issued by the President as necessary.

a.
b.
c.
et seq

5. Stenographer will be provided by . . . .

6. . . . copies of the Board's report are to be submitted.

APPENDIX SECTION – 12

SUGGESTED FORMAT FOR PILOTAGE AND TUG SERVICES CONTRACT

(See Section 1215)

It is understood and agreed that the furnishing of pilotage and/or tug services by the Department of the Navy for the vessel SS ________ ________________ shall not be construed to give rise to a personal contract between the named individuals signing this agreement; and

it is further understood and agreed that the Department of the Navy in furnishing any pilotage and/or tug services shall have the benefit of all exemptions from and limitations of liability to which the owner of a vessel is entitled under the applicable statutes of the United States; and

it is further understood and agreed that when any pilot or a captain of any tug furnished to or engaged in the service of assisting a vessel making use or having available her own propelling power, goes on board such vessel, or any vessel, he becomes the borrowed servant of the vessel assisted and her owner or operator for all purposes and in every respect, including but not limited to the handling and navigation of such vessel and in respect to any orders given to any assisting tugs, his services while so on board being the work of the vessel assisted and not of the United States Navy and being subject to the exclusive supervision and control of the ships personnel; and

it is further understood and agreed that the assisted vessel and her owners will assume all liability for any loss or damage (including that suffered or caused by any assisting tug) resulting from or arising out of the negligence or fault of the pilot or assisting tug and that neither the United States Navy, nor any pilot, nor any tug shall be liable, directly or by way of indemnity or otherwise, for any such loss or damage; and

it is further understood and agreed that if any such assisted vessel is not owned by the person or company ordering the pilotage and/or tug services, that such person or company warrants its authority to bind the vessel and her owners to all provisions of the preceding paragraphs, and agrees to indemnify and hold harmless the Department of the Navy, its agents, servants, employees and any assisting tug or pilot from any claim and all damages and expenses that may be sustained or incurred in consequence of such person or company not having such authority.

____
(Signature)

____
(Title)

FOR ________________________________
(Name of ship)

BIBLIOGRAPHY

(See Section 1201)

For those interested in acquiring further knowledge of maritime law or particular aspects thereof, the following publications are suggested:

ARZT, Marine Laws-Navigation and Safety (Equity House, 1953). Contains federal laws and international conventions governing maritime matters. Supplemented annually.

BAER, Admiralty Law of the Supreme Court (2nd ed. 1969, with 1973 Cumulative Supplement). The leading comprehensive compilation of admiralty cases decided by the U.S. Supreme Court.

BENEDICT ON ADMIRALTY, 7th ed. by Knauth, rev. 1968, (Baker, Voorhis & Co., Inc.) This is a comprehensive treatise in several volumes covering the procedural law of admiralty in the courts of the United States.

FARWELL & PRUNSKI, The Rules of the Nautical Road, 4th ed. (U.S. Naval Institute, 1967). Contains the texts and commentary on the rules of the road.

GILMORE & BLACK, The Law of Admiralty (Foundation Press, 2d ed, 1975). A more recent textbook on the substantive law.

GRIFFIN ON COLLISION (American Maritime Cases, Inc., 1949). A comprehensive statement of the principles of collision law as applied by the American courts.

NORRIS, Maritime Personnel Injuries (Baker, Voorhis & Co., Inc., 2nd ed. 1966). The law as to harbor workers, passengers and visitors, with annual supplements.

PARKS, Law of Tug, Tow and Pilotage (Cornell Maritime Press, Inc., 1971). A definitive volume on the law of towage and pilotage.

The various Rules of the Road are also contained in the following publications which may be obtained from Coast Guard Marine Inspection Offices in major ports, or from the Commandant of the Coast Guard:

CG-169, Rules of the Road, International - Inland.

CG-172, Rules of the Road - Great Lakes.

CG-184, Rules of the Road - Western Rivers.

APPENDIX SECTION – 13

WAIVER OF EXTRADITION (See section 1302)

"I, ____________________, United States Navy (United States Marine Corps), having been advised of my rights to formal extradition as provided for in section 1302 JAG Manual by ____________________________________ (name of military or civilian attorney) of ________________________ (address of attorney), waive such rights and agree to accompany ________________, a representative of the State of ________________, into the territorial limits of said State. I have been advised that the crime which I am charged to have committed in the State of ________________ is as follows:

____
(Signature)

WITNESSED:

____
(Signature of witness)

DELIVERY AGREEMENT (See section 1305)

"In consideration of the delivery of ____________________________ , United States
(name of person delivered)

Navy (United States Marine Corps), to __________________, at ___________________,

for trial upon the charge of __________________, I hereby agree pursuant to the

authority vested in me as __________________ that ____________________________,
(name of person delivered)

United States Navy (United States Marine Corps) will be transported to the State of

___________________ without expense to him or the United States and that the

Commanding Officer of the ___________________ will be notified immediately of the

outcome of the trial and that the said ____________________________, will be
(name of person delivered)

returned to the __________________, or to such place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, provided that the Department of the Navy shall then desire his return."

(See sections 1310 and 1315)

From: Commanding Officer
To: Judge Advocate General of the Navy

Subj: Delivery refused to ________________ authorities; case of [rank, full name, social security number, U.S. Navy/Marine Corps (or Reserve)]

Ref: (a) (Previous telephone or message notification to JAG
(b) JAGMAN section 1310
(c) JAGMAN section 1308

Encl: Copy Warrant of Arrest dtd

1. As reported by reference (a), and in accordance with reference (b), report is made that upon presentation of a valid warrant of arrest charging violation of (crime charged), (name of accused) was refused delivery to (sheriff, etc., of county, State, etc.) on (date) because (explain extraordinary circumstances) in accordance with reference (c).

2. Enclosure (1) is forwarded for information.

____
By direction

Copy to:
COMNAVMILPERSCOM/CMC (Code JAM-1)

(See sections 1310 and 1315)

From: Commanding Officer
To: Chief of Naval Personnel/Commandant of the Marine Corps
(Code JAM-1)

Subj: Delivery refused to________________authorities; case of
(rank, full name, social security number, U.S. Navy/Marine Corps
(or Reserve))

Ref: (a) JAGMAN § 1310
(b) JAGMAN § 1308

Encl: (1) Copy Warrant of Arrest dtd

1. In accordance with reference (a), report is made that upon presentation of a valid warrant of arrest charging violation of (crime charged), (name of accused) was refused delivery to (sheriff, etc., of county, State, etc.) on (date) because (disciplinary proceedings pending, etc.) in accordance with reference (b).

2. ______________________________ has been charged with
____ Article
_________________________ of the Uniform Code of Military Justice.

3. Enclosure (1) is forwarded for information.

____
By direction

Copy to:
Navy JAG (Code 14L)

APPENDIX SECTION – 15

(See section 1501)

CHAPTER 11 of 37 US Code (§601-604)

Payments to Mentally Incompetent Persons

Sec.
601. Applicability.
602. Payments: designation of person to receive amounts due.
603. Regulations.
604. Determination of Secretary final.

§601. Applicability

This chapter applies to—

(1) members of a uniformed service who are on active duty (other than for training) or who are on a retired list of that service; and

(2) members of the Fleet Reserve or Fleet Marine Corps Reserve.

§602. Payments: designation of person to receive amounts due

(a) Active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, that are otherwise payable to a member to whom this chapter applies and who, in the opinion of a board of medical officers or physicians, is mentally incapable of managing his affairs, may be paid for that member's use or benefit to any person designated by the Secretary concerned, or by any officer to whom he delegates his authority under this section, without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

(b) The board shall consist of at least three qualified medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, appointed from available medical officers or physicians under his jurisdiction by the head of whichever of the following is providing medical treatment for the member, or by a person designated by that head—

(1) Department of the Army;
(2) Department of the Navy;
(3) Department of the Air Force;
(4) Department of Health, Education, and Welfare; or
(5) Veterans' Administration.

If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.

(c) A payment made to a person who is designated under this section discharges the obligation of the United States as to the amount paid.

(d) A person serving in a legal, medical, fiduciary, or other capacity, may not demand or accept a fee, commission, or other charge for any service performed under this chapter.

(e) This section does not apply in any case in which a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction, except as to payments made before the paying agency of the department concerned receives notice of that appointment.

(f) A person who is designated to receive payments under this section shall furnish satisfactory assurance that the amounts received by him will be applied to the use and benefit of the incompetent member, and, where the payments may reasonably be expected to be more than $1,000 shall provide a suitable bond to be paid for out of amounts due the incompetent member.

§ 603. Regulations

The Secretary concerned and the Administrator of Veterans' Affairs shall prescribe regulations necessary to carry out this chapter.

§ 604. Determination of Secretary final

The determination as to the person authorized to receive a payment under section 602 of this title is final and is not subject to review by an official of the United States or a court.

APPENDIX SECTION – 18

(See chapter XVIII)

TABLE OF CUSTOMS EXEMPTIONS

	BASIS FOR EXEMPTION	ELIGIBILITY FOR EXEMPTION	FREQUENCY OF ELIGIBILITY	VALUE LIMITATIONS	ALCOHOL AND TOBACCO LIMITATIONS	POSSESSION REQUIREMENTS
EXEMPTIONS FOR RETURNING RESIDENTS	19 USC 1202 items 813.30 and 813.31	Return to U.S. after 48 hours beyond territorial limits plus visit to foreign country or insular possession of U.S.	Once each 30 days	$300 generally, $600 from Guam, American Samoa, Virgin Islands of U.S.	200 cigarettes; 100 cigars; 1 liter generally, 4 liters from Guam, American Samoa, Virgin Islands of U.S.	Possession at time of entry, unless required in an insular possession of the U.S.
EXEMPTIONS FOR NON-RESIDENTS	19 USC 1202 items 812.10-812.40 TD 72-91	Return to U.S. for short visit during extended duty abroad.	Once each 6 months for gifts only	All personal items $100 gifts, excluding alcoholic beverages and cigarettes but including up to 100 cigars	100 cigars, or 200 cigarettes, or 2 Kg. tobacco; 1 liter	Possession at time of entry
EXTENDED-DUTY EXEMPTIONS	19 USC 1202 item 817.00; Customs Regulations, section 10.26a	Return to U.S. upon termination of extended duty	One exemption at end of extended duty assignment	None	100 cigars, 1 gallon to include not more than 1 quart of non-U.S. beverages*	Possession at overseas duty station and at time of entry*
GIFTS	19 USC 1321; Customs Regulations, section 145.32	Presence in foreign country	One exemption each day measured by receipt	May not exceed $25 per donee in any day based on date of receipt in U.S. This amount is increased to $40.00 if the gift is from American Samoa, Guam, or the Virgin Islands.	No alcoholic beverages or tobacco permitted; perfume in shipment valued in excess of $5 not permitted	None
GIFTS SENT BY COMBAT-ZONE PERSONNEL	19 USC 1202 item 915.25; Customs Regulations, section 54.3	Armed Forces member serving in combat zone	No limitation	Amounts in excess of $50 per shipment are dutiable	No nontax-paid American cigarettes or alcoholic beverages	Must have been purchased in or through authorized agency of Armed Forces of U.S.
SEA-STORE CIGARETTES	19 USC 1321*	Voyage beyond territorial limits of U.S. without touching port outside U.S.	One exemption per voyage	None	2 opened packs ashore at any one time; 15 packs total	Must remain in personal possession

*Subject to change on short notice by Commissioner of Customs.

APPENDIX SECTION – 19

GUIDELINES FOR THE NAVY EXPANDED LEGAL ASSISTANCE PROGRAM
(See section 1906a)

1. Services under the Expanded Legal Assistance Program may be given (1) whenever a judge advocate is locally admitted or (2) whenever an agreement with cognizant State and local bar authorities permit non-locally-admitted judge advocates to provide representation. Even though no agreement is necessary when a judge advocate is admitted locally, consideration should be given to effecting liaison with cognizant bar officials. Any agreement establishing an Expanded Program should clearly define, as a minimum, (a) persons who are to be eligible for full representation under the Program, (b) the nature of the services which will be available, and (c) the qualifications of the legal assistance officers who will represent clients under the Program. The agreement need not be formal; however, a written memorandum of understanding between authorized officials of State and local bar associations and the staff judge advocate or legal assistance officer will avoid misunderstandings. The agreement should be approved by the local courts. A copy of each agreement will be forwarded to the Judge Advocate General. Authorization shall be obtained from the Judge Advocate General prior to the establishment of an Expanded Program.

2. The following guidelines are established for the operation of this Program:

a. Persons Eligible for Legal Assistance. The Expanded Legal Assistance Program may provide full representation to:

(1) Military personnel in pay grades E-3 and below;
(2) Married military personnel in pay grades E-4 and below and their dependents;
(3) Other military personnel who are unable to afford the services of an attorney without substantial financial hardship. Cases of military personnel within this category will be fully documented as to the justification for providing representation under the Expanded Legal Assistance Program.

b. Persons Ineligible for Legal Assistance.

(1) Personnel in pay grades E-4 and below will not be eligible if they have a source of substantial income independent of their military pay.
(2) Legal assistance services under the Expanded Program will not be available to retired military personnel or their dependents.

c. Services Available.

(1) Nature of representation. The objective of the Expanded Legal Assistance Program is to provide full representation for eligible clients. A legal assistance officer may write letters on behalf of his client; negotiate with another party or his lawyer; prepare all types of legal documents, including pleadings; and, where locally admitted or permitted by agreement, appear in court as attorney of record.

(2) Types of cases to be handled. Expanded Legal Assistance Programs may accept, but need not necessarily be limited to, the following types of cases:

1. Adoptions
2. Name changes
3. Routine or "short-form" statutory probates of small estates
4. Divorce, separation, and child-custody matters
5. Paternity
6. Nonsupport and Uniform Reciprocal Enforcement of Support Act cases
7. Collection of security deposits and debts
8. Actions involving conditional-sales contracts or warranties
9. Minor tort cases, in particular where there is a clear claim and an unjustified refusal to pay
10. Defense of disputed indebtedness
11. Criminal defense in traffic and minor misdemeanor cases

Services under the Expanded Legal Assistance Program are not intended to deprive civilian attorneys of sources of income. To the contrary, they are intended to provide needed legal services for eligible personnel who cannot provide a source of income to the civilian bar.

d. Qualifications of Legal Assistance Officers. In many cases, a legal assistance officer will not be a member of the bar of the State in which he is stationed and where he will be providing assistance. Every effort should therefore be made to enter into agreements which provide for representation by a legal assistance officer who is not a member of the local State bar but who is a member of the bar of a Federal court or of the highest court of any State. The agreements may provide for a legal assistance officer:

(1) To be generally admitted, or

(2) To be specifically admitted to the bar of the State where he is stationed:

(a) During his tour of duty, or
(b) On a year-to-year basis, or
(c) On a case-to-case basis, or

(3) To associate with an Armed Forces Reserve lawyer or cooperating civilian attorney, either with or without the civilian lawyer's presence during the court appearance, or

(4) To be admitted under any other conditions which will carry out the intent of this Program.

e. Correspondence, Legal Documents, and Pleadings. Pleadings prepared by a legal assistance officer under the Program may be signed by the legal assistance officer in this form: "JOHN DOE, Lieutenant, JAGC, USN, Legal Assistance Officer, U. S. Naval Station, (city, state)." The address of the legal assistance officer for purposes of service of process should follow the form: "Legal

Assistance Office, U. S. Naval Station, (city, state)." Letters prepared by the legal assistance officer as attorney for a client under the Expanded Legal Assistance Program may be on official letterhead stationery and signed in the form: "JOHN DOE, Lieutenant, JAGC, USN, Legal Assistance Officer." Such letters should be scrupulously framed to avoid any express or implied indication that the signer is speaking for the command shown on the letterhead or in any capacity other than that of legal assistance officer.

f. Court Appearances. Court and other appearances by legal assistance officers may be made either in uniform or in civilian clothes.

g. Representation of Opposing Parties or Interests. In the event that two eligible servicemen, or an eligible serviceman and his dependent, both seek assistance from the same office on the same matter and their interests are in conflict, the party first seeking assistance will be entitled to representation. The other party shall be advised that he is also entitled to assistance, but that the assistance will have to be obtained from another Navy or Marine Corps legal assistance office, from a legal assistance office of another service, from a Naval Reserve lawyer, from a legal-aid office, or from a cooperating civilian attorney. A Navy judge advocate shall assist the other party in obtaining such representation, and the judge advocate representing the first party may assist in obtaining such representation for the other party if his client has knowledge of the circumstances and interposes no objection.

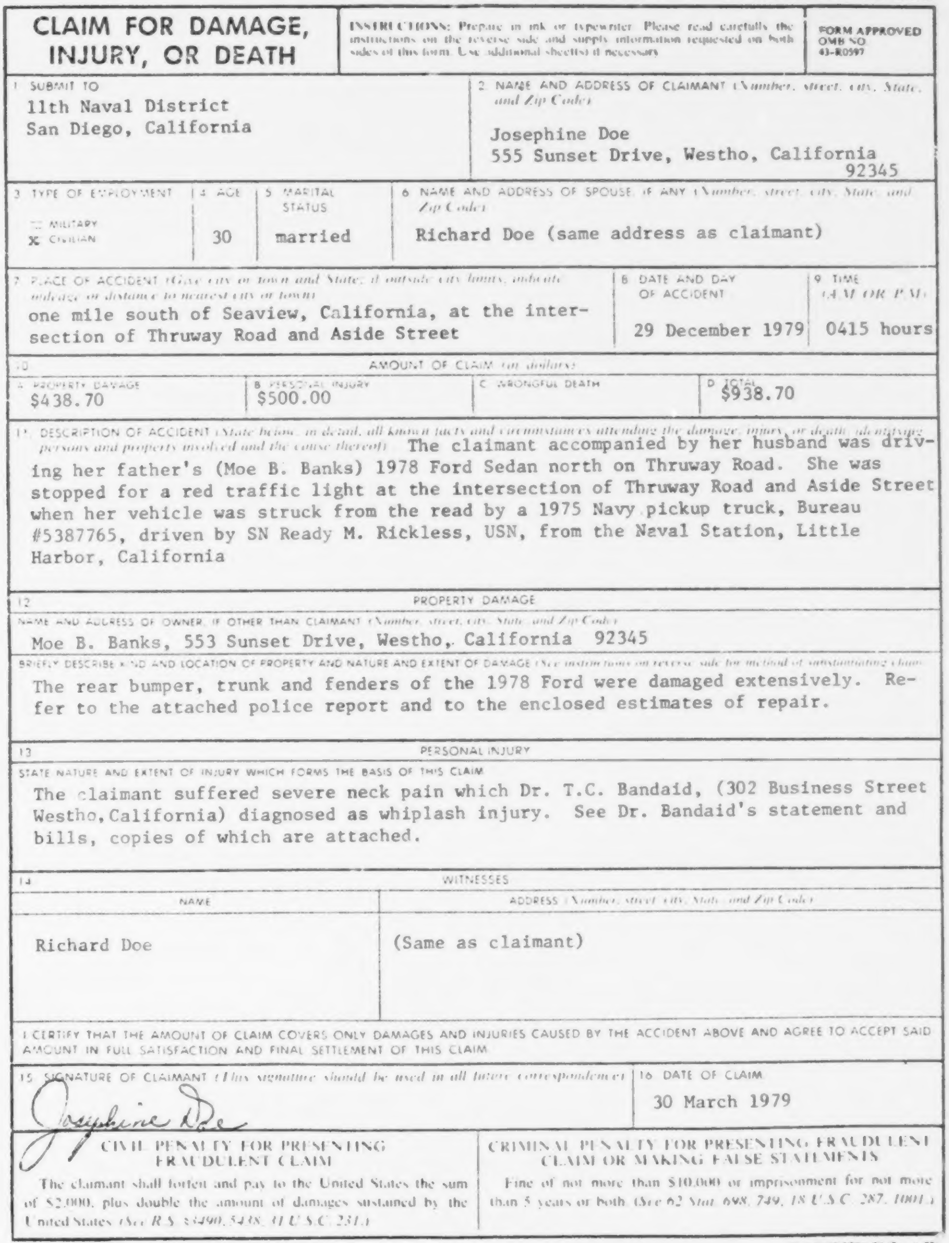
3. Before representing clients under the Expanded Legal Assistance Program, a legal assistance officer should be thoroughly familiar with the laws and procedures of the State and locality where he will be practicing. A legal assistance officer shall be guided at all times by the Code of Professional Responsibility of the American Bar Association. The director of the law center or senior staff judge advocate of the command will maintain close and continuing supervision over the performance of his legal assistance officer(s) in this Expanded Program with a view toward ensuring that there is compliance with locally-agreed guidelines and the policies set forth herein.

4. All fees and costs incident to his case shall be paid by the client, and not by the Department of the Navy. This restriction does not prohibit the client from borrowing or otherwise obtaining funds from the Navy Relief Society or other organization to pay necessary costs, if such arrangements can be made.

5. Effect on Existing Legal Assistance Program. The Expanded Legal Assistance Program will in no way curtail or diminish the legal assistance given to military personnel and their dependents under the traditional legal assistance program.

APPENDIX SECTION – 20

See section 2012



CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Prepare in ink or typewriter. Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary.

FORM APPROVED
OMB NO
43-R0597

1 SUBMIT TO
11th Naval District
San Diego, California

2 NAME AND ADDRESS OF CLAIMANT (*Number, street, city, State, and Zip Code*)
Josephine Doe
555 Sunset Drive, Westho, California
92345

3 TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN	4 AGE 30	5 MARITAL STATUS married	6 NAME AND ADDRESS OF SPOUSE, IF ANY (*Number, street, city, State, and Zip Code*) Richard Doe (same address as claimant)

7 PLACE OF ACCIDENT (*Give city or town and State; if outside city limits, indicate mileage or distance to nearest city or town*) one mile south of Seaview, California, at the intersection of Thruway Road and Aside Street	8 DATE AND DAY OF ACCIDENT 29 December 1979	9 TIME (*A.M. OR P.M.*) 0415 hours

10 AMOUNT OF CLAIM (*in dollars*)

A PROPERTY DAMAGE	B PERSONAL INJURY	C WRONGFUL DEATH	D TOTAL
$438.70	$500.00		$938.70

11 DESCRIPTION OF ACCIDENT (*State below, in detail, all known facts and circumstances attending the damage, injury, or death, identifying persons and property involved and the cause thereof*) The claimant accompanied by her husband was driving her father's (Moe B. Banks) 1978 Ford Sedan north on Thruway Road. She was stopped for a red traffic light at the intersection of Thruway Road and Aside Street when her vehicle was struck from the read by a 1975 Navy pickup truck, Bureau #5387765, driven by SN Ready M. Rickless, USN, from the Naval Station, Little Harbor, California

12 PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (*Number, street, city, State, and Zip Code*)
Moe B. Banks, 553 Sunset Drive, Westho, California 92345

BRIEFLY DESCRIBE KIND AND LOCATION OF PROPERTY AND NATURE AND EXTENT OF DAMAGE (*See instructions on reverse side for method of substantiating claim*)
The rear bumper, trunk and fenders of the 1978 Ford were damaged extensively. Refer to the attached police report and to the enclosed estimates of repair.

13 PERSONAL INJURY

STATE NATURE AND EXTENT OF INJURY WHICH FORMS THE BASIS OF THIS CLAIM
The claimant suffered severe neck pain which Dr. T.C. Bandaid, (302 Business Street Westho, California) diagnosed as whiplash injury. See Dr. Bandaid's statement and bills, copies of which are attached.

14 WITNESSES

NAME	ADDRESS (*Number, street, city, State, and Zip Code*)
Richard Doe	(Same as claimant)

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

15 SIGNATURE OF CLAIMANT (*This signature should be used in all future correspondence*) Josephine Doe	16 DATE OF CLAIM 30 March 1979

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant shall forfeit and pay to the United States the sum of $2,000, plus double the amount of damages sustained by the United States (*See R.S. §3490, 5438, 31 U.S.C. 231.*)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine of not more than $10,000 or imprisonment for not more than 5 years or both. (*See 62 Stat. 698, 749; 18 U.S.C. 287, 1001.*)

95-106

STANDARD FORM 95 (Rev. 6-78)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority.* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 *et seq.*, 28 U.S.C. 2671 *et seq.*, 28 C.F.R. 14.3.

B. *Principal Purpose.* The information requested is to be used in evaluating claims.

C. *Routine Use.* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond.* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

INSTRUCTIONS

Complete all items—Insert the word NONE where applicable

Claims for damage to or for loss or destruction of property, or for personal injury, must be signed by the owner of the property damaged or lost or the injured person. If, by reason of death, other disability or for reasons deemed satisfactory by the Government, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing authority to act.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 10 of this form. Separate claims for personal injury and property damage are not acceptable.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically reparable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

Any further instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item # 1 on the reverse side.

(d) Failure to completely execute this form to supply the requested material within two years from the date the allegations accrued may render your claim "invalid".

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

17. DO YOU CARRY ACCIDENT INSURANCE? ☒ YES, IF YES, GIVE NAME AND ADDRESS OF INSURANCE COMPANY *(Number, street, city, State, and Zip Code)* AND POLICY NUMBER. ☐ NO

NOPAY Auto Assurance
1258 Gotham
Big City, California 92678

18. HAVE YOU FILED CLAIM ON YOUR INSURANCE CARRIER IN THIS INSTANCE, AND IF SO, IS IT FULL COVERAGE OR DEDUCTIBLE? Yes, deductable	19. IF DEDUCTIBLE, STATE AMOUNT $100.00

20. IF CLAIM HAS BEEN FILED WITH YOUR CARRIER, WHAT ACTION HAS YOUR INSURER TAKEN OR PROPOSES TO TAKE WITH REFERENCE TO YOUR CLAIM? *(It is necessary that you ascertain these facts)*

No action taken

21. DO YOU CARRY PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE? ☒ YES, IF YES, GIVE NAME AND ADDRESS OF INSURANCE CARRIER *(Number, street, city, State, and Zip Code)* ☐ NO

NOPAY Auto Assurance
(same as above)

☆ GPO : 1978 O-260-460(51)

STANDARD FORM 45 BACK (REV. 6-78)

(See section 2013b)

STANDARD FORM 95 -- PRIVACY ACT STATEMENT
(Claim for Damage and Injury)

1. AUTHORITY: 28 U.S.C. §§ 2671-2680; 10 U.S.C. § 2733

2. PRINCIPAL PURPOSE(S): Information is obtained to support an individual's claim against the Government and is used principally in connection with the filing, investigation, review, processing, and settlement or litigation of the individual's claim and the Government's derivative claims against third parties.

3. ROUTINE USES: Information provided in the form may be furnished to third parties having responsibility in connection with the individual's claim, to cognizant officials within the Department of the Navy and other components of the Department of Defense, and to the Department of Justice.

4. DISCLOSURE MANDATORY/VOLUNTARY, CONSEQUENCES OF REFUSAL TO DISCLOSE: Disclosure is voluntary, but failure to provide the information called for may preclude processing of the claim.

____
Claimant

____
Date

(See section 2018)

SETTLEMENT AGREEMENT

Judge Advocate General
Department of the Navy
200 Stovall Street
Alexandria, Virginia 22332

Dear Sir:

[I] [We]____________________________________ hereby agree to accept the sum of ____________________ DOLLARS AND [NO] CENTS ($___, ___.___) in full satisfaction and final settlement of any and all claims [I] [we] now have or in the future may have against the UNITED STATES OF AMERICA and its agents and employees, allegedly arising from [medical malpractice at the Naval Regional Medical Center, ____________________,] [an automobile accident at____________________] [____________________] [on or about____________________ 19____,] [from on or about ____________________, 19____ to____________________,], resulting in [injuries to____________________] [the death of____________________] [____________________].

In consideration for the payment of the sum stated above, [I] [we] will indemnify and hold harmless the UNITED STATES OF AMERICA and its agents and employees from any and all claims, actions, or proceedings which may hereafter be asserted or brought by or on behalf of any person or entity to recover for damages arising out of or related to [(my) (our) interest in] * the matters alleged in the claim filed by [me] [us].

**Pursuant to 28 U.S.C. §2678 (1976), [I] [we], the undersigned, further agree that an attorney's fee in the amount of not more than 20% or ____________________ DOLLARS AND [NO] CENTS ($____, ____.___) shall be paid to ____________________, Esquire, [my] [our] attorney, which sum shall be paid out of the proceeds of the settlement amount payable to [me] [us] and not in addition thereto.

____
ATTORNEY

____
[CLAIMANT]

____
DATE

____
DATE

____
WITNESS

____
ADDRESS OF WITNESS

*This phrase may be appropriate in cases where there are known multiple claimants or subrogees.
**This sentence is not used in Military Claims Act cases.

(See section 2018)

SETTLEMENT AGREEMENT

Judge Advocate General
Department of the Navy
200 Stovall Street
Alexandria, Virginia 22332

Dear Sir:

[I] [We] ________________________________ individually and as the [father] [and] [mother] and legal guardian of [my] [our] minor [child] [children], ________________ ________________ and [I] [we] ________________________ hereby agree to accept the sum of ________________________________ DOLLARS AND [NO] CENTS ($____, ____ . ___) in full satisfaction and final settlement of any and all claims we now have or in the future may have against the UNITED STATES OF AMERICA and its agents and employees, allegedly arising from [medical malpractice at the Naval Regional Medical Center, ________________ ________________,] [an automobile accident at ________________________] [________________] [on or about ________________, 19___.] [from on or about ________________, 19___, to ________________,] resulting in [injuries to ________________________] [the death of ________________________] [________________________].

In consideration for the payment of the sum stated above, we agree that we will indemnify and hold harmless the UNITED STATES OF AMERICA and its agents and employees from any and all claims, actions, or proceedings which may hereafter be asserted or brought by or on behalf of any person or entity to recover for damages arising out of or related to [our interest in] * the matters alleged in the claim filed by us.

**Pursuant to 28 U.S.C. §2678 (1976), we, the undersigned, further agree that an attorney's fee in the amount of not more than 20% or ________________________________ DOLLARS AND [NO] CENTS ($____ , ______ . ___) shall be paid to ________________________ ________________________, Esquire, our attorney, which sum shall be paid out of the proceeds of the settlement amount payable to us and not in addition thereto.

____
ATTORNEY

____
DATE

____
WITNESS

____
ADDRESS OF WITNESS

____
[CLAIMANT]
Individually and as legal guardian and [father] and [mother] of [my] [our] minor [child] [children]

____

____

*This phrase may be appropriate in cases where there are known multiple claimants or subrogees.
**This sentence is not used in Military Claims Act cases.

(See section 2007b)

CERTIFICATE FOR LIMITED REPORT FORMAT

Date:____________

I certify that I have investigated the ( ) accident or ( ) incident, that the facts fully substantiate the claim, and that I have taken the following action:

____

____

____

____

____

____

(If more space is required continue on back)

I further find that the amount claimed represents the claimant's loss and recommend payment in the amount of $___________.

Encl: ________ Std Form 91

________ Police Report

________ Paid Bill or Estimate

________ Other

____
Investigating Officer

____
Commanding Officer

Approved for payment under ( ) Federal Tort Claims Act (sections 2001-2016 JAG Manual)
( ) Military Claims Act (sections 2020-2029 JAG Manual)

____
Authorized adjudicating officer

Note:
1. Indicate either accident or incident.
2. In the space provided for noting the action taken by the investigating officer, he should describe very briefly the limited investigation upon which his recommendation is based -- for example, information (estimates, etc.) received by telephone from______________; interviewed Government driver (other driver, witnesses, etc.); inspected damaged property; violations of local law; etc.
3. The Standard Form 91 must be included in all cases involving motor-vehicle accidents.
4. Indicate under which Act claim will be paid.

376-781 0 - 82 - 16

Standard Form 1145
September 1973
4 Treasury FRM 2000
1145-105

VOUCHER FOR PAYMENT UNDER FEDERAL TORT CLAIMS ACT

Voucher No. Do not fill in
Schedule No. Do not fill in
Claim No. Do not fill in

PAID BY

U.S. Department of the Navy -- Naval Legal Service Office, Philadelphia
(Department, bureau, or establishment)

Voucher prepared at U.S. Naval Base, Philadelphia, PA 19112 May 3, 1979
(Give place and date)

THE UNITED STATES, Dr.,

To John Doe, Sr., as Guardian of John Doe, Jr., & Joseph Smith, Esq.
c/o Smith, Jones & Black (Payee(s))
Address 312 West Fourth St., P.O. Box 961, New York, NY 10000

Amount claimed, $ 10,000.00 Date claim accrued January 18, 1979

Amount of award, compromise, or settlement FOUR THOUSAND DOLLARS AND NO CENTS $ 4,000.00

Brief Description of Claim: (See attachments for further explanation in detail.)

On January 18, 1979, a U.S. Navy vehicle operated by Joe Doakes while acting within the scope of his Federal employment, struck a vehicle in which claimant was a passenger. The accident occurred at the intersection of Main and Broad Avenues, Paoli, PA. The claimant was not contributorily negligent, and he has agreed in writing to accept the above sum in full settlement of his claim. This claim is considered proper for payment under the Federal Torts Claims Act (38 U.S.C. 2671-2680).

ACCEPTANCE BY CLAIMANT(S)

I, (We), the claimant(s), do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), and agree that said acceptance constitutes a complete release by me (us) of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Date Do not fill in, 19
Not necessary. Enclose SF-95 (and settlement agreement if payment is less than amount stated on SF-95)

SIGN ORIGINAL ONLY

(Claimant)

(Claimant)

This claim has been fully examined in accordance with the provisions of the Federal Tort Claims Act (28 U.S.C. 2672), and is approved in the	Pursuant to the authority vested in me, I certify that this voucher is correct and proper for payment in the
amount of $ 4,000.00	amount of $ Do not fill in
(signature) (Head of Federal agency, or authorized designee)	To be signed by GAO (Authorized certifying officer)
Date May 3, 1979 Authorized by JAG-MAN 2080	Date Do not fill in, 19
SIGN ORIGINAL ONLY Title Commanding Officer NLSO, Philadelphia	**SIGN ORIGINAL ONLY** Title Do not fill in

ACCOUNTING CLASSIFICATION

U.S. GOVERNMENT PRINTING OFFICE 1974—O-539-340

Paid by Check No.

TABLE OF DELEGATED AND DESIGNATED AUTHORITY TO PAY A CLAIM

A.

DELEGATED AND DESIGNATED AUTHORITY	FEDERAL TORT CLAIMS ACT	MILITARY CLAIMS ACT	ADVANCE PAYMENTS*	NONSCOPE CLAIMS
JUDGE ADVOCATE GENERAL	unlimited**	$25,000***	$1,000	$1,000
DEPUTY JUDGE ADVOCATE GENERAL	unlimited**	$ 5,000	$1,000	$1,000
ASSISTANT JUDGE ADVOCATE GENERAL (Civil Law)	unlimited**	$ 5,000	$1,000	$1,000
DEPUTY ASSISTANT JUDGE ADVOCATE GENERAL (Claims)	$25,000	$ 5,000	$1,000	$1,000
HEAD, FEDERAL TORT CLAIMS BRANCH, CLAIMS DIVISION, OJAC	$20,000	$ 5,000	$1,000	$1,000
HEAD, MILITARY CLAIMS BRANCH, OJAC		$ 5,000		
COMMANDING OFFICERS OF NAVAL LEGAL SERVICE OFFICES; COMMANDING OFFICER, U.S. NAVAL STATION, PANAMA CANAL; COMMANDER, U.S. NAVAL BASE, ROOSEVELT ROADS, PUERTO RICO; OFFICERS IN CHARGE OF NAVAL LEGAL SERVICE OFFICES DETACHMENTS WHEN SPECIFICALLY DESIGNATED BY COGNIZANT COMMANDING OFFICERS OF NAVAL LEGAL SERVICE OFFICES: AND CLAIMS OFFICERS AT NAVAL LEGAL SERVICE OFFICES, AT THE U.S. NAVAL STATION, PANAMA CANAL, AND AT THE U.S. NAVAL BASE, ROOSEVELT ROADS, PUERTO RICO, WHEN SPECIFICALLY DESIGNATED BY THE COGNIZANT COMMANDER, OR COMMANDING OFFICER	$20,000	$ 5,000	$1,000	$1,000
OVERSEAS COMMANDS WITH A JUDGE ADVOCATE GENERAL'S CORPS OFFICER OR A JUDGE ADVOCATE OF THE MARINE CORPS ATTACHED		$ 5,000	$1,000	$1,000

B. The authority to deny Federal Tort Claims is double the Federal Tort Claims Act approval authority shown above. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), and the Deputy Assistant Judge Advocate General (Claims) may deny Federal Tort Claims in any amount. The Judge Advocate General may deny Military Claims in any amount. All others may deny only up to the amount of their adjudicating authority.

C. Nonscope claims adjudicated in the field will be forwarded to the Judge Advocate General for payment.

D. Foreign Claims: The Judge Advocate General may approve a Foreign Claim up to $25,000. Any excess must be referred to Congress. A Foreign Claims Commission (depending on its constitution) may approve claims for payment from $5,000 to $20,000.

*advance payment of military and foreign claims

**need approval of Dept. Justice over $25,000

***over $25,000 referred to GAO for payment

TABLE OF TERRITORIAL RESPONSIBILITY FOR PAYMENT OF CLAIMS

A. Federal Tort Claims, Military Claims, Advance Payment Claims, Nonscope Claims, and Affirmative Claims

RESPONSIBLE COMMAND	TERRITORY
NAVLEGSVCOFF NEWPORT	MAINE, VERMONT, NEW HAMPSHIRE, MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, AND NEW YORK
NAVLEGSVCOFF PHILADELPHIA	PENNSYLVANIA, NEW JERSEY, AND DELAWARE
NAVLEGSVCOFF WASHINGTON, D.C.	MARYLAND, THE DISTRICT OF COLUMBIA, AND VIRGINIA COUNTIES IN NAVAL DISTRICT WASHINGTON
NAVLEGSVCOFF NORFOLK	VIRGINIA LESS COUNTIES IN NAVAL DISTRICT WASHINGTON, WEST VIRGINIA, AND PORTIONS OF NORTH CAROLINA IN THE FORMER FIFTH NAVAL DISTRICT
NAVLEGSVCOFF CHARLESTON	NORTH CAROLINA LESS PORTIONS IN THE FORMER FIFTH NAVAL DISTRICT, SOUTH CAROLINA, AND GEORGIA
NAVLEGSVCOFF JACKSONVILLE	THAT PORTION OF FLORIDA EAST OF THE WESTERN BOUNDARIES OF GADSEN, LIBERTY, AND FRANKLIN COUNTIES
NAVLEGSVCOFF PENSACOLA	THAT PORTION OF FLORIDA WEST OF THE EASTERN BOUNDARIES OF JACKSON, CALHOUN, AND GULF COUNTIES, ALABAMA, MISSISSIPPI AND LOUISIANA
NAVLEGSVCOFF MEMPHIS	MISSOURI, TENNESSEE, KENTUCKY, AND ARKANSAS
NAVLEGSVCOFF GREAT LAKES	NORTH DAKOTA, SOUTH DAKOTA, NEBRASKA, MINNESOTA, MICHIGAN, IOWA, WISCONSIN, OHIO, ILLINOIS, AND INDIANA
NAVLEGSVCOFF CORPUS CHRISTI	TEXAS
NAVLEGSVCOFF SAN DIEGO	THAT PORTION OF CALIFORNIA IN SAN DIEGO, IMPERIAL, RIVERSIDE, AND SAN BERNARDINO COUNTIES, AND ARIZONA, NEW MEXICO, AND OKLAHOMA
NAVLEGSVCOFF LONG BEACH	THAT PORTION OF CALIFORNIA IN KERN, SANTA BARBARA, VENTURA, LOS ANGELES, AND ORANGE COUNTIES
NAVLEGSVCOFF SAN FRANCISCO	THAT PORTION OF CALIFORNIA NORTH OF THE SOUTHERN BOUNDARIES OF SAN LUIS OBISPO, KINGS, TULARE, AND INYO COUNTIES, AND NEVADA, UTAH, COLORADO, AND KANSAS
NAVLEGSVCOFF SEATTLE	WASHINGTON, OREGON, IDAHO, MONTANA, WYOMING, AND ALASKA
NAVLEGSVCOFF PEARL HARBOR	HAWAII, INCLUDING MIDWAY AND PACIFIC ISLAND POSSESSIONS SERVICED FROM HAWAII
U.S. NAVAL BASE, ROOSEVELT ROADS, PUERTO RICO	PUERTO RICO AND CARIBBEAN POSSESSIONS

A. (continued)

NAVAL STATION, PANAMA CANAL	CANAL ZONE
NAVLEGSVCOFF MARIANAS	GUAM

B. *Military Claims Outside of the United States:* Military Claims procedures outside the United States are used primarily to pay claims for American citizens not covered by the Foreign Claims Act, and for damage to active duty servicemen's property not covered by the Personnel Claims Act, such as automobile collision cases. All Naval Legal Service Offices, and those overseas commands with a judge advocate and claims budget allotment, may process claims up to $5,000. Claims in excess of this amount must be adjudicated by the Judge Advocate General.

APPENDIX SECTION – 21

(See section 2108b)

From:
To: Commander, Military Sealift Command
58th Street and 1st Avenue, Brooklyn, New York 11250

Subj: Claim of (Grade, Full Name, SSAN)

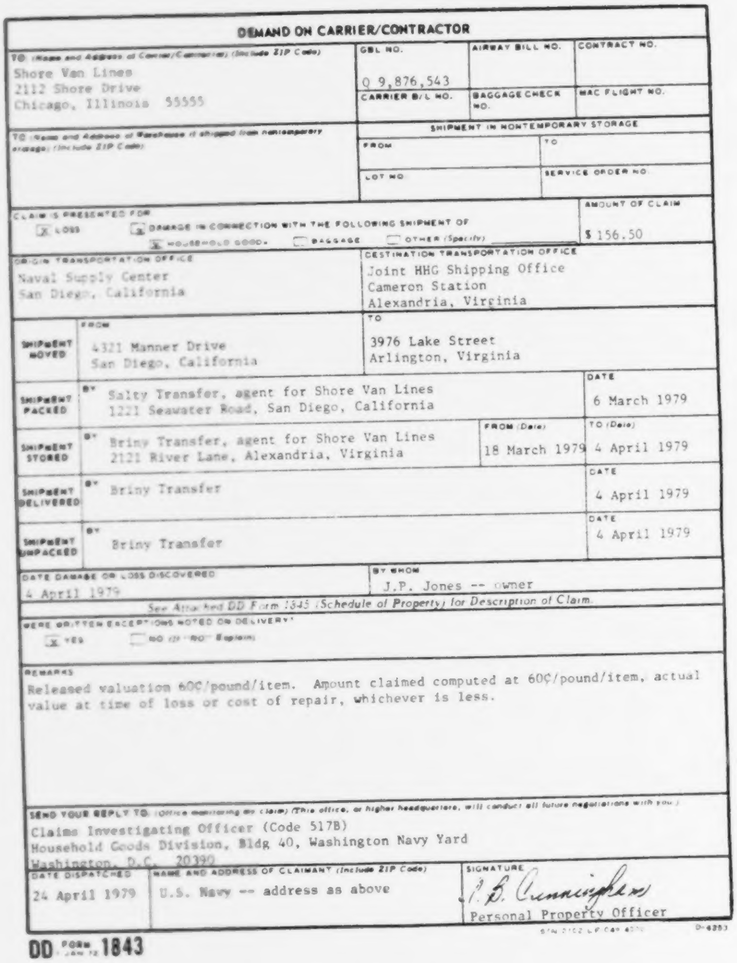
Ref: (a) Chapter XXI, JAG Manual, Section 2108

Encl: (1) Pay voucher
(2) Copy of subject claim

1. In accordance with reference (a), enclosures (1) and (2) are forwarded for action. Subject claim, which has been adjudicated and paid by the Department of the Navy, involves damage to (description of damaged item) occurring aboard the (name of ship) which sailed from (port of embarkation) on (date of departure) and discharged at (port of departure).

2. It is requested that recovery action be initiated against the ocean carrier in the amount of $________.

3. Upon completion of your action, it is requested that enclosures (1) and (2) and any amount recovered be transmitted to this office with advice as to the action taken.



DEMAND ON CARRIER/CONTRACTOR

TO (Name and Address of Carrier/Contractor) (Include ZIP Code):
Shore Van Lines
2112 Shore Drive
Chicago, Illinois 55555

GBL NO.: Q 9,876,543
AIRWAY BILL NO.:
CONTRACT NO.:
CARRIER B/L NO.:
BAGGAGE CHECK NO.:
MAC FLIGHT NO.:

TO (Name and Address of Warehouse if shipped from nontemporary storage) (Include ZIP Code):

SHIPMENT IN NONTEMPORARY STORAGE
FROM:
TO:
LOT NO.:
SERVICE ORDER NO.:

CLAIM IS PRESENTED FOR
☒ LOSS ☒ DAMAGE IN CONNECTION WITH THE FOLLOWING SHIPMENT OF
☒ HOUSEHOLD GOODS ☐ BAGGAGE ☐ OTHER (Specify)

AMOUNT OF CLAIM: $ 156.50

ORIGIN TRANSPORTATION OFFICE:
Naval Supply Center
San Diego, California

DESTINATION TRANSPORTATION OFFICE:
Joint HHG Shipping Office
Cameron Station
Alexandria, Virginia

SHIPMENT MOVED
FROM:
4321 Manner Drive
San Diego, California
TO:
3976 Lake Street
Arlington, Virginia

SHIPMENT PACKED
BY:
Salty Transfer, agent for Shore Van Lines
1221 Seawater Road, San Diego, California
DATE: 6 March 1979

SHIPMENT STORED
BY:
Briny Transfer, agent for Shore Van Lines
2121 River Lane, Alexandria, Virginia
FROM (Date): 18 March 1979
TO (Date): 4 April 1979

SHIPMENT DELIVERED
BY: Briny Transfer
DATE: 4 April 1979

SHIPMENT UNPACKED
BY: Briny Transfer
DATE: 4 April 1979

DATE DAMAGE OR LOSS DISCOVERED: 4 April 1979
BY WHOM: J.P. Jones -- owner

See Attached DD Form 1845 (Schedule of Property) for Description of Claim.

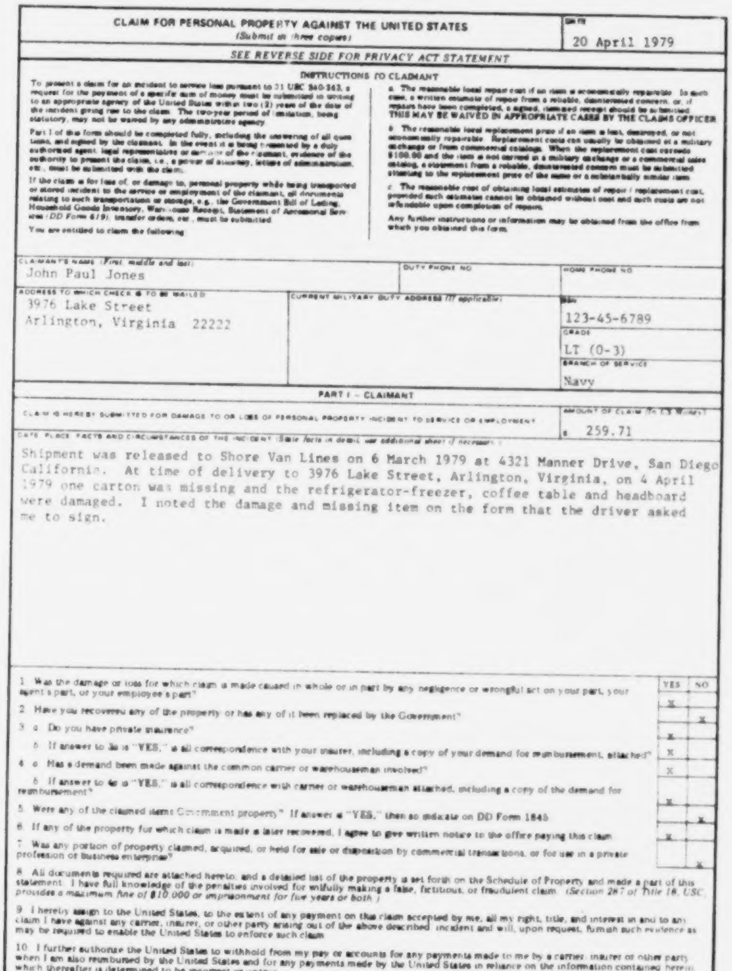
WERE WRITTEN EXCEPTIONS NOTED ON DELIVERY?
☒ YES ☐ NO (If "NO" Explain)

REMARKS:
Released valuation 60¢/pound/item. Amount claimed computed at 60¢/pound/item, actual value at time of loss or cost of repair, whichever is less.

SEND YOUR REPLY TO: (Office monitoring my claim) (This office, or higher headquarters, will conduct all future negotiations with you.)
Claims Investigating Officer (Code 517B)
Household Goods Division, Bldg 40, Washington Navy Yard
Washington, D.C. 20390

DATE DISPATCHED: 24 April 1979
NAME AND ADDRESS OF CLAIMANT (Include ZIP Code): U.S. Navy -- address as above
SIGNATURE: P. B. Cunningham
Personal Property Officer

DD FORM 1 JAN 72 1843



CLAIM FOR PERSONAL PROPERTY AGAINST THE UNITED STATES
(Submit in three copies)

DATE
20 April 1979

SEE REVERSE SIDE FOR PRIVACY ACT STATEMENT

INSTRUCTIONS TO CLAIMANT

To present a claim for an incident to service loss pursuant to 31 USC 240-243, a request for the payment of a specific sum of money must be submitted in writing to an appropriate agency of the United States within two (2) years of the date of the incident giving rise to the claim. The two-year period of limitation, being statutory, may not be waived by any administrative agency.

Part I of this form should be completed fully, including the answering of all questions, and signed by the claimant. In the event it is being presented by a duly authorized agent, legal representative or survivor of the claimant, evidence of the authority to present the claim, i.e., a power of attorney, letters of administration, etc., must be submitted with the claim.

If the claim is for loss of, or damage to, personal property while being transported or stored incident to the service or employment of the claimant, all documents relating to such transportation or storage, e.g., the Government Bill of Lading, Household Goods Inventory, Warehouse Receipt, Statement of Accessorial Services (DD Form 619), transfer orders, etc., must be submitted.

You are entitled to claim the following:

a. The reasonable local repair cost if an item is economically repairable. In such case, a written estimate of repair from a reliable, disinterested concern, or, if repairs have been completed, a signed, itemized receipt should be submitted. THIS MAY BE WAIVED IN APPROPRIATE CASES BY THE CLAIMS OFFICER.

b. The reasonable local replacement price if an item is lost, destroyed, or not economically repairable. Replacement costs can usually be obtained at a military exchange or from commercial catalogs. When the replacement cost exceeds $100.00 and the item is not carried in a military exchange or a commercial sales catalog, a statement from a reliable, disinterested concern must be submitted attesting to the replacement price of the same or a substantially similar item.

c. The reasonable cost of obtaining local estimates of repair / replacement cost, provided such estimates cannot be obtained without cost and such costs are not refundable upon completion of repairs.

Any further instructions or information may be obtained from the office from which you obtained this form.

CLAIMANT'S NAME *(First, middle and last)*: John Paul Jones
DUTY PHONE NO:
HOME PHONE NO:
ADDRESS TO WHICH CHECK IS TO BE MAILED:
3976 Lake Street
Arlington, Virginia 22222
CURRENT MILITARY DUTY ADDRESS *(If applicable)*:
SSN: 123-45-6789
GRADE: LT (0-3)
BRANCH OF SERVICE: Navy

PART I – CLAIMANT

CLAIM IS HEREBY SUBMITTED FOR DAMAGE TO OR LOSS OF PERSONAL PROPERTY INCIDENT TO SERVICE OR EMPLOYMENT

AMOUNT OF CLAIM *(In U.S. Money)*: $ 259.71

DATE, PLACE, FACTS AND CIRCUMSTANCES OF THE INCIDENT *(State facts in detail; use additional sheet if necessary.)*

Shipment was released to Shore Van Lines on 6 March 1979 at 4321 Manner Drive, San Diego California. At time of delivery to 3976 Lake Street, Arlington, Virginia, on 4 April 1979 one carton was missing and the refrigerator-freezer, coffee table and headboard were damaged. I noted the damage and missing item on the form that the driver asked me to sign.

	YES	NO
1. Was the damage or loss for which claim is made caused in whole or in part by any negligence or wrongful act on your part, your agent's part, or your employee's part?	X	
2. Have you recovered any of the property or has any of it been replaced by the Government?		X
3. a. Do you have private insurance?	X	
b. If answer to 3a is "YES," is all correspondence with your insurer, including a copy of your demand for reimbursement, attached?	X	
4. a. Has a demand been made against the common carrier or warehouseman involved?	X	
b. If answer to 4a is "YES," is all correspondence with carrier or warehouseman attached, including a copy of the demand for reimbursement?	X	
5. Were any of the claimed items Government property? If answer is "YES," then so indicate on DD Form 1845.		X
6. If any of the property for which claim is made is later recovered, I agree to give written notice to the office paying this claim.	X	
7. Was any portion of property claimed, acquired, or held for sale or disposition by commercial transactions, or for use in a private profession or business enterprise?		X

8. All documents required are attached hereto, and a detailed list of the property is set forth on the Schedule of Property and made a part of this statement. I have full knowledge of the penalties involved for wilfully making a false, fictitious, or fraudulent claim. *(Section 287 of Title 18, USC, provides a maximum fine of $10,000 or imprisonment for five years or both.)*

9. I hereby assign to the United States, to the extent of any payment on this claim accepted by me, all my right, title, and interest in and to any claim I have against any carrier, insurer, or other party arising out of the above described incident and will, upon request, furnish such evidence as may be required to enable the United States to enforce such claim.

10. I further authorize the United States to withhold from my pay or accounts for any payments made to me by a carrier, insurer or other party when I am also reimbursed by the United States and for any payments made by the United States in reliance on the information contained herein which thereafter is determined to be incorrect or untrue.

11. I hereby authorize my insurer to release any information to the United States regarding insurance coverage I have for this loss.

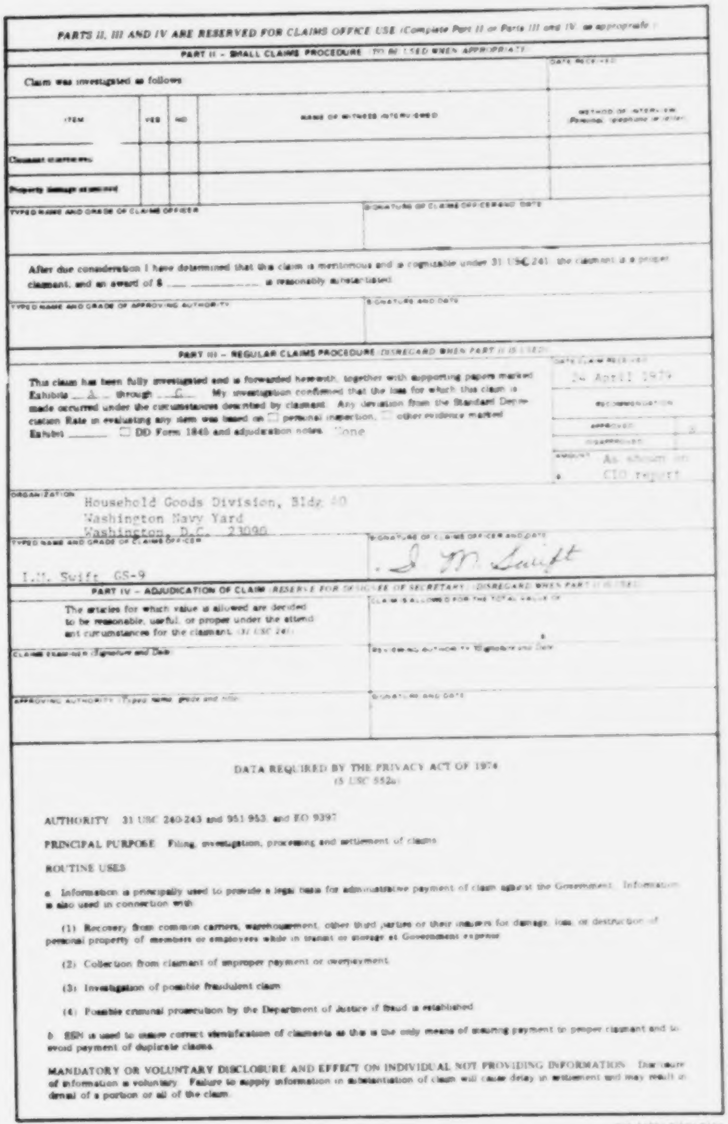
12. I have not made a previous claim against the United States for loss or damage now claimed.

SIGNATURE OF WITNESS AND DATE:

SIGNATURE OF CLAIMANT (or Agent) AND DATE: John P. Jones 20 April 1979

DD FORM 1 FEB 77 1842 — EDITION OF 1 JAN 72 IS OBSOLETE. REPLACES DD FORM 1842 PRIVACY ACT STATEMENT, 26 SEP 75, WHICH IS OBSOLETE.

S/N 0102-LF-001-8420



PARTS II, III AND IV ARE RESERVED FOR CLAIMS OFFICE USE *(Complete Part II or Parts III and IV as appropriate.)*

PART II – SMALL CLAIMS PROCEDURE *(TO BE USED WHEN APPROPRIATE)*

Claim was investigated as follows:

DATE RECEIVED

ITEM	YES	NO	NAME OF WITNESS INTERVIEWED	METHOD OF INTERVIEW (Personal, telephone or letter)
Claimant interviewed				
Property damage examined				

TYPED NAME AND GRADE OF CLAIMS OFFICER

SIGNATURE OF CLAIMS OFFICER AND DATE

After due consideration I have determined that this claim is meritorious and is cognizable under 31 USC 241, the claimant is a proper claimant, and an award of $ ______ is reasonably substantiated.

TYPED NAME AND GRADE OF APPROVING AUTHORITY

SIGNATURE AND DATE

PART III – REGULAR CLAIMS PROCEDURE *(DISREGARD WHEN PART II IS USED)*

This claim has been fully investigated and is forwarded herewith, together with supporting papers marked Exhibits A through C. My investigation confirmed that the loss for which this claim is made occurred under the circumstances described by claimant. Any deviation from the Standard Depreciation Rate in evaluating any item was based on ☐ personal inspection, ☐ other evidence marked Exhibit ______ ☐ DD Form 1840 and adjudication notes. None

DATE CLAIM RECEIVED: 24 April 1979

RECOMMENDATION

APPROVED: X

DISAPPROVED:

AMOUNT $ As shown on CIO report

ORGANIZATION

Household Goods Division, Bldg 40
Washington Navy Yard
Washington, D.C. 23090

TYPED NAME AND GRADE OF CLAIMS OFFICER: I.M. Swift GS-9

SIGNATURE OF CLAIMS OFFICER AND DATE: I. M. Swift

PART IV – ADJUDICATION OF CLAIM *(RESERVE FOR DESIGNEE OF SECRETARY) (DISREGARD WHEN PART II IS USED)*

The articles for which value is allowed are decided to be reasonable, useful, or proper under the attendant circumstances for the claimant. *(31 USC 241)*

CLAIM IS ALLOWED FOR THE TOTAL VALUE OF $

CLAIMS EXAMINER *(Signature and Date)*

REVIEWING AUTHORITY *(Signature and Date)*

APPROVING AUTHORITY *(Typed name, grade and title)*

SIGNATURE AND DATE

DATA REQUIRED BY THE PRIVACY ACT OF 1974
(5 USC 552a)

AUTHORITY: 31 USC 240-243 and 951-953, and EO 9397

PRINCIPAL PURPOSE: Filing, investigation, processing and settlement of claims.

ROUTINE USES

a. Information is principally used to provide a legal basis for administrative payment of claim against the Government. Information is also used in connection with:

(1) Recovery from common carriers, warehousemen, other third parties or their insurers for damage, loss, or destruction of personal property of members or employees while in transit or storage at Government expense.

(2) Collection from claimant of improper payment or overpayment.

(3) Investigation of possible fraudulent claim.

(4) Possible criminal prosecution by the Department of Justice if fraud is established.

b. SSN is used to insure correct identification of claimants as this is the only means of assuring payment to proper claimant and to avoid payment of duplicate claims.

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION: Disclosure of information is voluntary. Failure to supply information in substantiation of claim will cause delay in settlement and may result in denial of a portion or all of the claim.

S/N 0102-LF-001-8420

PARTS II, III AND IV RESERVED FOR CLAIMS OFFICE USE

(Complete Part II or Parts III and IV, as appropriate)

PART II - SMALL CLAIMS PROCEDURE *(To be used when appropriate)* Claim was investigated as follows: Exceptions taken at delivery on all items. Exceptions on DD619 compared with origin inventory. Replacement cost for refr. door verified with witness named below.	DATE RECEIVED 24 April 1972

ITEM	YES	NO	NAME OF WITNESS INTERVIEWED	METHOD OF INTERVIEW *(Persona , telephone or letter)*
Claimant Interviewed	X		Ronald Wrench Wrench Refrigeration, Inc.	Telephone 224-5072
Property Damage Examined		X		

After due consideration I have determined that this claim is meritorious and is cognizable under 31 U.S.C.241, the claimant is a proper claimant; and an award of $ ________ is reasonably substantiated.

TYPED NAME AND GRADE OF APPROVING AUTHORITY	SIGNATURE

PART III - REGULAR CLAIMS PROCEDURE *(DISREGARD when part II is used)*	DATE RECEIVED
This claim has been fully investigated and is forwarded herewith, together with supporting papers marked Exhibits _____ through _____. My investigation confirmed that the loss for which this claim is made occurred under the circumstances described by claimant. Any deviation from the Standard Depreciation Rate in evaluating any item was based on ☐ personal inspection, ☐ other evidence marked Exhibit _____. ☐ DD Form 1845 and adjudication notes.	RECOMMENDATION ☐ APPROVED ☐ DISAPPROVED **AMOUNT** $

ORGANIZATION

TYPED NAME AND GRADE OF CLAIMS OFFICER	SIGNATURE OF CLAIMS OFFICER

PART IV - ADJUDICATION OF CLAIM *(Reserve for designee of Secretary) (DISREGARD when Part II is used)*

The articles for which value is allowed are decided to be reasonable, useful, or proper under the attendant circumstances for the claimant. *(31 U.S.C. 241)*	CLAIM IS ALLOWED FOR THE TOTAL VALUE OF $
CLAIMS EXAMINER *(Signature and date)*	REVIEWING AUTHORITY *(Signature and date)*

APPROVING AUTHORITY *(Typed name, grade and title)*	SIGNATURE	DATE

SCHEDULE OF PROPERTY
(For use with DD Forms 1842 and 1843)

CLAIM OF
John P. Jones, LT, USN

Page 1 of 1 Pages

LINE NO.	INVENTORY NUMBER	QUANTITY	DESCRIPTION OF ARTICLE (Include trade mark, brand name, model, year of manufacture and size)	NATURE AND EXTENT OF DAMAGE (Describe new damage in detail. If lost, indicate missing)	WEIGHT [illegible]	DATE OF PURCHASE OR ACQUISITION	PURCHASE PRICE OR ACQUISITION VALUE	AMOUNT CLAIMED [illegible]	AMOUNT CLAIMED COST OF REPAIRS	RESERVED FOR APPROVING AUTHORITY AMOUNT ALLOWED	RESERVED FOR APPROVING AUTHORITY REMARKS
1	74	1	Lane walnut coffee table	Numerous rubs and scratches on top	50 lb	June 1970	$109.00		$40.00	$30.00	**
2	127	1	Bassett mahogany veneer headboard	Edge chipped, veneer loosened along edge	40 lb	June 1970	279.50		15.00	15.00	
3	134	1	Sears Coldspot Deluxe 15.1 cu ft refr/freezer, no icemaker	Hole in door	308 lb	Aug 1971	294.95		87.50	87.50	
4	246	10	Bath towels	Missing	Carton 40 lb	June 1970	32.00	$34.80		20.88	*
5	"	10	Face towels	"	"	June 1970	16.00	18.80		11.28	*
6	"	10	Wash cloths	"	"	June 1970	7.00	9.00		5.40	*
7	"	1	Bathroom scale, J.C. Penney	"	"	1968	6.95	8.99		4.50	*
8	"	1	Plastic shower curtain	"	"	July 1970	2.50	3.00		1.80	*
9	"	4	Bars bath size ivory soap (unopened)	"	"	1972	.60	.60		.60	
10	"	3	Sets queen size permanent press percale sheets	"	"	1970-1971	36.00	41.34		28.94	*
11	"	1	Rubber ducky	"	"	1971	.59	.59		.30	*
										$206.20	

* Normal Depreciation Taken.

** Reduced due to preexisting damage included in repair cost.

DD FORM 1 JAN 71 1845 REPLACES DA FORM 1089-1, WHICH IS OBSOLETE

(See section 2121c(2)(a))

FORMAT FOR NOTIFICATION OF REIMBURSEMENT FOR HOUSEHOLD GOODS

AIR MAIL SPEED LETTER

From: Claims Investigating Officer

To: Appropriate Command

Re: CLAIM FOR REIMBURSEMENT HOUSEHOLD GOODS

1. (FULL NAME OF CLAIMANT)

2. (GRADE)

3. (SERVICE NUMBER)

4. (DATE CLAIM FORWARDED TO ADJUDICATING AUTHORITY)

5. CLAIMANT HAS RETAINED (AMOUNT PAID) SETTLEMENT FROM CARRIER, CONTRACTOR OR INSURER. REQUEST DEDUCTION FROM GOVERNMENT SETTLEMENT OR CHECKAGE AS APPROPRIATE.

OR

5. ATTACHED CARRIER, CONTRACTOR OR INSURER SETTLEMENT CHECK ENDORSED TO THE JUDGE ADVOCATE GENERAL

OR

5. CLAIM WITH CARRIER, CONTRACTOR OR INSURER DENIED; CONSIDERED (JUSTIFIED/UNJUSTIFIED)

(See section 2121d)

CERTIFICATE OF DEMAND ON CARRIER, CONTRACTOR OR INSURER

____
(date)

I, the undersigned, hereby certify that on ______________ (date) I made written demand on _____________________________________ (Carrier, contractor or insurer) for ____________ (amount) in accordance with the terms and conditions of the bill of lading under which my household effects were shipped, or my contract of insurance. I certify that I have (have not) been reimbursed by the above carrier, contractor, or insurer in the amount of $______________in settlement of my claim. If I have not been reimbursed by the above carrier, contractor, or insurer, I agree to notify the Claims Investigating Officer of any subsequent action, settlement, or denial made to me. A copy of my demand letter, together with a copy or original of all shipping documents and insurance policies, and all correspondence pertinent thereto are attached to this certificate. I have advised the carrier, contractor and/or insurer to address all future correspondence in regard to this claim to me, in care of the Claims Investigating Officer. I further agree that, if recovery is received from the carrier, contractor and/or insurer after my claim has been paid by the Government, I will pay the proceeds to the United States, or will submit to checkage of my pay account in an equivalent amount; such payment or checkage may not exceed the amount received by me from the United States.

____
(Signature of Claimant)

CLAIM INVESTIGATING OFFICER'S REPORT

CLAIMANT: J. J. JONES, LT., USN

GBL NO. : Q-9,876,543

I. FACTUAL SUMMARY

Facts are as stated by claimant. Hole in refrigerator-freezer door was apparently caused by forklift, probably during handling associated with storage in transit. All loss and damage was noted on DD 619.

II. RECOMMENDATIONS:

Line 1: coffee table - Repair cost includes refinishing table top. Preexisting scratch is considered to consitute a substantial part of damage to be repaired. Recommend payment of 75% of the amount claimed.

Line 2: headboard - Amount claimed for repair is reasonable. Recommend payment in full.

Line 3: refrigerator-freezer - Amount claimed based on claimant's telephone conversation with Al's Appliance Center. Reasonableness of cost claimed for replacing door confirmed by CIO telephone conversation with Wrench Refrigeration Inc. Recommend payment in full of amount claimed.

Lines 4-11: Replacement costs claimed are considered reasonable in comparison with catalog and Navy Exchange prices for similar items. Recommend payment of replacement cost less normal depreciation.

I M. Swift

I. M. SWIFT
Claims Investigating Officer

CLAIM ANALYSIS CHART

Page 1 of 1 Pages

NAME OF CLAIMANT	NAME OF CARRIER CONTRACTOR	CLAIM NO.	GBL NO.	LOT NO.	OTHER
J. P. Jones	Shore Van Lines	72-000	Q 9,876,543		

LINE NO.	DAMAGE LOST ITEM (Describe in Detail. Give Model No. if Available)	ORIGIN (Contractor's Name) & DATE OF INV.: Salty Transfer, agent for Shore Van Lines 6 March 1972		DESTINATION RECEIVER (Contractor's Name) & DATE OF INV.: J. P. Jones - owner 4 April 1972		DELIVERY EXCEPTIONS NOTED ON					WT OF LINE ITEM	ESTIMATE OF REPAIR NEW DAMAGE	ORIG. COST / YEAR OF PURCH.	LIABILITY DATA		
		INV. NO.	EXCEPTION	INV. NO.	EXCEPTION	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				U.S. PAID	WAREHOUSE	CARRIER
1	Lane Walnut Coffee Table	74	3" Scratch on top legs rubbed and scratched	74	numerous rubs and scratches on top	X					50#	claimed 40.00 recommend 30.00	109.00 1970			
2	Bassett mahogany veneer headboard	127	Rubbed on front	127	Edge chipped, veneer loosened along edge	X					40#	claimed 15.00 reasonable	279.50 set 1970			
3	Sears Coldspot Deluxe refrigerator-freezer 15.1 cu. ft. no icemaker	134	Chipped on front and sides	134	hole in door	X					308#	87.50 OK	294.95 1971			
COMMENTS													TOTAL			

DD FORM 1 JAN 72 1844

LIST OF COMMANDS THAT HAVE RECEIVED FUNDING AUTHORITY AND ACCOUNTING DATA FROM THE JUDGE ADVOCATE GENERAL

The following is a list of commands (allottees) that have received funding authority and accounting data from the Judge Advocate General. There are personnel attached who have adjudicating authority and are capable of processing claims filed pursuant to 31 U.S.C. §§ 240-243 (see section 2124), or in the alternative, claims are adjudicated by personnel attached to another command, and in some instances adjudication is accomplished through a sub-allotment.

The commands listed in this appendix are grouped for simplicity by the dollar amount adjudicating authority of personnel. The listing contained in this appendix does not constitute adjudicating authority. Adjudicating authority by dollar amount is contained in section 2124a.

A. $25,000 AUTHORITIES

1. NAVLEGSVCOFF Philadelphia
2. NAVLEGSVCOFF Norfolk
3. NAVLEGSVCOFF Charleston
4. NAVLEGSVCOFF Great Lakes
5. NAVLEGSVCOFF San Diego
6. NAVLEGSVCOFF Treasure Island
7. NAVLEGSVCOFF Seattle
8. NAVLEGSVCOFF Pearl Harbor
9. NAVLEGSVCOFF Newport
10. NAVLEGSVCOFF Memphis
11. NAVLEGSVCOFF Corpus Christi
12. NAVLEGSVCOFF Washington
13. NAVLEGSVCOFF Pensacola
14. NAVLEGSVCOFF Jacksonville
15. NAVLEGSVCOFF Naples
16. NAVLEGSVCOFF Subic
17. NAVLEGSVCOFF Guam
18. NAVLEGSVCOFF Yokosuka
19. NAVLEGSVCOFF Long Beach
20. NSC Oakland

B. $10,000 AUTHORITIES

21. COMNAVFORCARIB Roosevelt Roads
22. COMNAVBASE Guantanamo Bay
23. NAVSTA Panama Canal

C. $5,000 AUTHORITIES

24. NAVLEGSVCOFFDET New London
25. NAVLEGSVCOFFDET Key West
26. NAVLEGSVCOFFDET Sigonella
27. NAVLEGSVCOFFDET Orlando
28. NAVLEGSVCOFFDET Whidbey Island
29. NAVLEGSVCOFFDET Lemoore
30. NAVLEGSVCOFFDET Rota
31. NAVLEGSVCOFFDET New Orleans
32. NAVLEGSVCOFFDET London
33. NSC Puget Sound

D. $1,000 AUTHORITIES

34. NSC Charleston
35. NAS Kingsville
36. NAS Chase Field, Beeville
37. NAS Pensacola
38. NAS Brunswick
39. NAS Meridian
40. NAS Bermuda
41. NAVSTA Keflavik
42. NAVSTA Mayport
43. NAVSTA Adak
44. NAF Sigonella
45. NAF Atsugi
46. NAF Midway
47. NAVFAC Argentina
48. COMFLEACT Okinawa
49. COMFLEACT Sasebo
50. ADMINSUPU Bahrain
51. NAVPGSCOL Monterey
52. CBC Gulfport
53. NAVAIRTESTCEN Patuxent River
54. NAVAIRENGCEN Lakehurst
55. NAVORDFAC Sasebo
56. NAVCOMMSTA Harold E. Holt
57. NAVSUPPO La Maddalena
58. NAVSECGRUACT Misawa
59. NAVWPNCEN China Lake
60. COMUSFORAZ Lages
61. NAVAL SHIPYARD Portsmouth

In addition to the foregoing, naval officers attached to the following commands have been designated $1,000 adjudicating authorities by name by the Judge Advocate General by separate correspondence in accordance with section 2124a(6). Some of the following commands hold an individual allotment from the Judge Advocate General, and others utilize a sub-allotment.

1. NSC Oakland
2. NSC Norfolk
3. NSC Pearl Harbor
4. NSC San Diego
5. NSD Guam
6. NAVSCSCOL Athens
7. NSD Subic Bay
8. NAS Jacksonville
9. NSD Yokosuka

(See section 2117b)

DD FORMS 1842 and 1845 -- PRIVACY ACT STATEMENT
(Claim for Personal Property Against the United States)

1. AUTHORITY: 31 U.S.C. §§ 240-243

2. PRINCIPAL PURPOSE(S): Information is obtained to support an individual's claim against the Government and is used principally in connection with the filing, investigation, review, processing, and settlement of the individual's claim and the Government's derivative claims against carriers, warehousemen, insurers, or other third parties.

3. ROUTINE USES: Information provided in the form may be furnished to carriers, warehousemen, insurers, or other third parties having responsibility in connection with the individual's loss; cognizant officials within the Department of the Navy and Defense; and the Department of Justice.

4. DISCLOSURE MANDATORY/VOLUNTARY, CONSEQUENCE OF REFUSAL TO DISCLOSE: Disclosure is volunatry, but failure to provide the information called for will proclude processing of the claim.

APPENDIX SECTION – 22

SETTLEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby agree(s) to accept the sum of ____

($______________) in full satisfaction and final settlement of any and all claims (I)(we) now have or may in the future have against the UNITED STATES OF AMERICA, or any of its agents or employees, arising out of___

____

____.

(I)(We) agree that upon receipt of the aforesaid sum, the UNITED STATES OF AMERICA, and its agents and employees, shall be forever discharged from any and all claims, demands, damages, actions, causes of action, or suits of any nature or kind whatsoever arising out of the aforesaid matter.

IN WITNESS WHEREOF, the undersigned (have)(has) signed these presents this _________day of ____________, 19___.

____

WITNESS:

____

____

APPENDIX SECTION – 24

Excerpt from Federal Register of 9 Nov 1962. * (See section 2413)

Executive Order 11060

PRESCRIBING CERTAIN REGULATIONS AND DELEGATING TO THE ATTORNEY GENERAL CERTAIN AUTHORITY OF THE PRESIDENT TO PRESCRIBE OTHER REGULATIONS RELATING TO THE RECOVERY FROM TORTIOUSLY LIABLE THIRD PERSONS OF THE COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Under and by virtue of the authority vested in me by Title 3 of the United States Code and by Section 2(a) of the Act of September 25, 1962 (Public Law 87-693), it is hereby ordered as follows:

SECTION 1. The Director of the Bureau of the Budget shall, for the purposes of the Act of September 25, 1962, from time to time, determine and establish rates that represent the reasonable value of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

SEC. 2. Except as provided in Section 1 of this order, the Attorney General shall prescribe regulations to carry out the purposes of the Act of September 25, 1962.

JOHN F. KENNEDY

THE WHITE HOUSE
November 7, 1962.

* (See section 2405c)

DEPARTMENT OF JUSTICE ORDER
NO. 289-62 AS AMENDED

Title 28, Code of Federal Regulations, Part 43, reads as follows:

(Order No. 289-62)*

PART 43-RECOVERY OF COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Sec.
43.1 Administrative determination and assertion of claims.

43.2 Obligations of persons receiving care and treatment.

43.3 Settlement and waiver of claims.

43.4 Annual reports.

Authority: Sections 43.1 to 43.4 issued under sec. 2(a), 76 Stat. 593; E. O. 11060, Nov. 7, 1962, 27 F. R. 10925.

---

*As amended by Order 344-65 of 14 June 1965 (30 F. R. 7819).

§43.1 Administrative determination and assertion of claims.

(a) The head of a Department or Agency of the United States responsible for the furnishing of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances), or his designee, shall determine whether such hospital, medical, surgical, or dental care and treatment was or will be furnished for an injury or disease caused under circumstances entitling the United States to recovery under the Act of September 25, 1962 (Public Law 87-693); and, if it is so determined, shall, subject to the provisions of section 43.3, assert a claim against such third person for the reasonable value of such care and treatment. The Department of Justice, or a Department or Agency responsible for the furnishing of such care and treatment, may request any other Department or Agency to investigate, determine, or assert a claim under the regulations in this part.

(b) Each Department or Agency is authorized to implement the regulations in this part to give full force and effect thereto.

(c) The provisions of the regulations in this part shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Veterans Administration to an eligible veteran for a service-connected disability under the provisions of chapter 17 of title 38 of the United States Code.

§43.2 Obligations of persons receiving care and treatment.

(a) In the discretion of the Department or Agency concerned, any person furnished care and treatment under circumstances in which the regulations in this part may be applicable, his guardian, personal representative, estate, dependents, or survivors may be required:

(1) To assign in writing to the United States his claim or cause of action against the third person to the extent of the reasonable value of the care and treat-

ment furnished or to be furnished, or any portion thereof;

(2) To furnish such information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment is being given and concerning any action instituted or to be instituted by or against a third person;

(3) To notify the Department or Agency concerned of a settlement with, or an offer of settlement from, a third person; and

(4) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(b) Records as to medical history, diagnosis findings, or treatment may be withheld pending compliance with the provision of this section.

§ 43.3 Settlement and waiver of claims.

(a) The head of the Department or Agency of the United States asserting such claim, or his designee, may (1) accept the full amount of a claim and execute a release therefor, (2) compromise or settle and execute a release of any claim, not in excess of $20,000, which the United States has for the reasonable value of such care or treatment, or (3) waive and in this connection release any claim, not in excess of $20,000 in whole or in part, either for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in section 43.1.

(b) Claims in excess of $20,000 may be compromised, settled, waived and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which (1) the claim of the United States for such care and treatment has been referred to the Department of Justice, or (2) a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described above and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving (1) unusual circumstances, (2) a new point of law which may serve as a precedent, or (3) a policy question where there is or may be a difference of views between any of such Departments and Agencies.
(Order No. 373-67, 32 F. R. 713, Jan. 21, 1967)

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from, third persons.

The regulations prescribed by this order shall become effective on January 1, 1963.

* (See section 2410 and A-24-a)

BUREAU OF THE BUDGET RATE SCHEDULES

COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Bureau of the Budget by section 1 of Executive Order No. 11060 of November 7, 1962, (27 F.R. 10925), the following rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations), and have been determined to represent the reasonable value of hospital, nursing home, medical, surgical or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals and nursing homes, with the exception of Freedmen's Hospital, Washington, D.C., and Canal Zone Government hospitals—

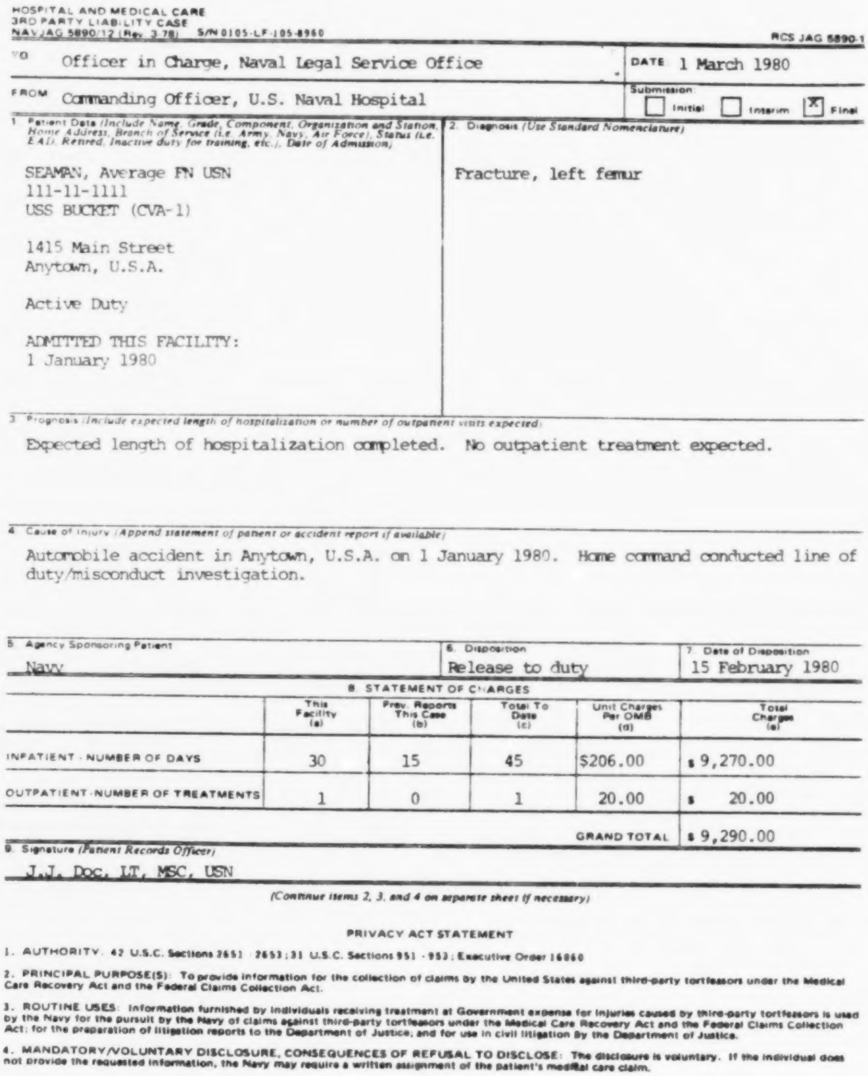
	Hospital Care Per Inpatient Day			Outpatient Medical and Dental Treatment	
Effective Date	Federal General & TB Hospitals	Federal Mental Hospitals	V.A. Nursing Home Units	Per facility visit	Federal Register Source
07/01/62 - 06/30/63	$36.00	$14.25		$7.00	28 F. R. 11516
07/01/63 - 10/21/63	37.00	14.75		8.00	28 F. R. 11516
10/22/63 - 06/30/64	39.00	14.75		8.00	28 F. R. 11516
07/01/64 - 08/31/64	40.00	15.00		8.00	28 F. R. 11516
09/01/64 - 12/31/65	42.00	15.50		8.50	28 F. R. 12482
01/01/66- 06/30/66	44.00	16.00	$16.50	9.00	30 F. R. 16220
07/01/66- 09/30/66	45.00	16.50	16.50	9.00	30 F. R. 16220
10/01/66 - 06/30/68	45.00	17.00	17.50	9.00	31 F. R. 10754

	Hospital Care Per Inpatient Day			Outpatient Medical and Dental Treatment	
Effective Date	Federal General & TB Hospitals	Federal Mental Hospitals	V.A. Nursing Home Units	Per Facility Visit	Federal Register Source
7/1/68 - 8/31/69	$49.00	$19.00	$16.00	$10.00	33 F.R. 6943 & 33 F.R. 7048
9/1/69 - 6/30/70	53.00	24.00	18.00	11.00	34 F.R. 14252
7/1/70 - 6/30/71	58.00	25.00	19.00	12.00	35 F.R. 10531
7/1/71 - 6/30/73	61.00	27.00	20.00	13.00	36 F.R. 11327
	DOD General Hospitals			DOD Outpatient Treatment Per Visit	
* 7/1/73 - 6/30/74	126.00	47.00	31.00	16.00	38 F.R. 22444
7/1/74 - 6/30/75	133.00	60.00	36.00	16.00	39 F.R. 20651
7/1/75 - 6/30/76	147.00	58.00	40.00	19.00	40 F.R. 24254
7/1/76 - 10/5/77	168.00	68.00	53.00	20.00	41 F.R. 26757
10/6/77 - 5/30/79	206.00	84.00	60.00	20.00	42 F.R. 54480
6/1/79 - 3/31/80	226.00	98.00	66.00	23.00	44 F.R. 32490
4/1/80 - 5/10/81	254.00	110.00	74.00	26.00	45 F.R. 24293
5/11/81 and thereafter	336.00	141.00	98.00	33.00	46 F.R. 25738

	DOD	VA	HRS
INPATIENT	$336.00	$245.00	$224.00
IN PANAMA	$397.00		
PSYCHIATRIC CARE		$154.00	
BROOKE BURN CENTER	$1,010.00		
OUTPATIENT	$33.00	$54.00	$44.00
IN PANAMA	$44.00		

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be the amounts expended by the United States for such care and treatment;

(c) For such care and treatment at Canal Zone Government hospitals, the rates shall be those established, and in effect at the time the care and treatment is furnished, by the Canal Zone Government for such care and treatment furnished to beneficiaries of other U.S. Government agencies.



HOSPITAL AND MEDICAL CARE
3RD PARTY LIABILITY CASE
NAVJAG 5890/12 (Rev. 3-78) S/N 0105-LF-105-8960

RCS JAG 5890-1

TO Officer in Charge, Naval Legal Service Office

DATE 1 March 1980

FROM Commanding Officer, U.S. Naval Hospital

Submission: ☐ Initial ☐ Interim ☒ Final

1. Patient Data *(Include Name, Grade, Component, Organization and Station, Home Address, Branch of Service (i.e. Army, Navy, Air Force), Status (i.e. EAD, Retired, Inactive duty for training, etc.), Date of Admission)*

SEAMAN, Average FN USN
111-11-1111
USS BUCKET (CVA-1)

1415 Main Street
Anytown, U.S.A.

Active Duty

ADMITTED THIS FACILITY:
1 January 1980

2. Diagnosis *(Use Standard Nomenclature)*

Fracture, left femur

3. Prognosis *(Include expected length of hospitalization or number of outpatient visits expected)*

Expected length of hospitalization completed. No outpatient treatment expected.

4. Cause of Injury *(Append statement of patient or accident report if available)*

Automobile accident in Anytown, U.S.A. on 1 January 1980. Home command conducted line of duty/misconduct investigation.

5. Agency Sponsoring Patient: Navy

6. Disposition: Release to duty

7. Date of Disposition: 15 February 1980

8. STATEMENT OF CHARGES

	This Facility (a)	Prev. Reports This Case (b)	Total To Date (c)	Unit Charges Per OMB (d)	Total Charges (e)
INPATIENT - NUMBER OF DAYS	30	15	45	$206.00	$ 9,270.00
OUTPATIENT - NUMBER OF TREATMENTS	1	0	1	20.00	$ 20.00
				GRAND TOTAL	$ 9,290.00

9. Signature *(Patient Records Officer)*

J.J. Doc, LT, MSC, USN

(Continue items 2, 3, and 4 on separate sheet if necessary)

PRIVACY ACT STATEMENT

1. AUTHORITY. 42 U.S.C. Sections 2651 - 2653; 31 U.S.C. Sections 951 - 953; Executive Order 16060

2. PRINCIPAL PURPOSE(S): To provide information for the collection of claims by the United States against third-party tortfeasors under the Medical Care Recovery Act and the Federal Claims Collection Act.

3. ROUTINE USES: Information furnished by individuals receiving treatment at Government expense for injuries caused by third-party tortfeasors is used by the Navy for the pursuit by the Navy of claims against third-party tortfeasors under the Medical Care Recovery Act and the Federal Claims Collection Act; for the preparation of litigation reports to the Department of Justice; and for use in civil litigation by the Department of Justice.

4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSAL TO DISCLOSE: The disclosure is voluntary. If the individual does not provide the requested information, the Navy may require a written assignment of the patient's medical care claim.

HOSPITAL AND MEDICAL CARE
3RD PARTY LIABILITY CASE
SUPPLEMENTAL STATEMENT
NAVJAG 5890/12 (Rev. 3-78)(Back)

TO Officer in Charge, Naval Legal Service Office DATE 1 March 1980

FROM NAVAL HOSPITAL, EVERFLOAT

Patient's Name	Rank/Rate	Social Security No.	Status
SEAMAN, Average	FN	111-11-1111	Discharged

PART I - PERIODS OF LEAVE, WEEKEND LIBERTY AND SUBSISTING OUT

Leave

FROM	TO	TYPE	NO. OF DAYS
8 February 1980	10 February 1980	Annual	2

Weekend Liberties

NO. OF LIBERTIES	NO. DAYS IN LIBERTY PERIOD	TOTAL DAYS
1	2	2
	TOTAL	4

Subsisting Out (Officers Only)

FROM	TO	NO. OF DAYS
	TOTAL	
	GRAND TOTAL	

PART II - PATIENT CLASSIFICATIONS (ENLISTED ONLY)*

CLASS	FROM	TO
V	1 January 1980	10 January 1980
IV	11 January 1980	25 January 1980
III	26 January 1980	31 January 1980
II	1 February 1980	7 February 1980
I	8 February 1980	15 February 1980

* CLASS I	AMBULANT	NO LIMITATIONS ON PHYSICAL CAPACITY
CLASS II	AMBULANT	PHYSICAL ACTIVITY MODERATELY LIMITED
CLASS III	AMBULANT	CONFINED TO WARD EXCEPT TO GO TO SPECIFIC HOSPITAL AREAS.
CLASS IV	BED PATIENT	BED PATIENT WITH HEAD PRIVILEGES
CLASS V	BED PATIENT	STRICT BED PATIENT.

PART III - EVALUATION OF MEDICAL TREATMENT

1. If this patient had been in a civilian hospital rather than a military establishment
   A. Date that necessary inpatient treatment was essentially completed 1 February 1980
   B. The number of outpatient treatments which would have been required had subject been discharged on the above date 5

2. Prognosis for permanent injury and permanent disability in this case

None

I.M. Doktor, LCDR, MC, USN
Attending Physician's Signature
(Applicable to Part III Only)

STANDARD FORM 96
(ED. 11-1-62)

* (See sections 2405a and 2407)

DEPARTMENT OF JUSTICE
28 CFR 43.1-43.4

NOTICE OF CLAIM

TO: Mr. John Tortfeasor
1414 Main Street
Anytown, U. S. A.

Take notice that, pursuant to 76 Stat. 593, 42 United States Code, §§ 2651-2653, the United States of America is entitled to recover, and does hereby make claim for, the reasonable value of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished

FN Average Seaman, USN

in connection with injuries sustained or disease suffered on 1 January 1969 under circumstances indicating your legal liability to pay damages therefor.

You should immediately send the enclosed copy of this notice to your insurance company.

Inquiries concerning this claim should be addressed to:

Litigation and Claims Division
Office of the Judge Advocate General
Department of the Navy
Washington, D. C. 20370

(RESERVED)

(See section 2419)

DEPARTMENT OF THE NAVY
PROMISSORY NOTE CONTAINING AGREEMENT FOR JUDGMENT

$____________________ __________________, 19______

For value received, I (we jointly and severally) promise to pay to the order of the Treasurer of the United States the sum of ______Dollars, with interest at the rate of ______ per annum, in monthly installments of not less than________________ dollars each, payable at ________________________________on or before the first day of each calendar month until such obligation is fully paid. If any such installment shall remain unpaid for a period of ten days, the entire amount of this obligation, with interest, less payments actually made, shall thereupon become immediately due and payable at the option of the United States Attorney for the District of ________ ________________without demand or notice, said demand and notice being hereby expressly waived.

I (we) do hereby authorize and empower the said United States Attorney, any of his assistants, or any attorney of any court of record, State or Federal, to appear for me (us) and to enter and confess judgment against me (us) for the entire amount of this obligation, with interest, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court or record, Federal or State; to waive the issuance and service of process upon me (us) in any suit on this obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering up such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

I (we) hereby ratify and confirm all that said attorney may do by virtue hereof.

____

____

(See section 2420)

From: Commandant of the Marine Corps
To: Judge Advocate General

Subj: Property damage claims in favor of the United States
(Report Control JAG 5890-3)

Ref: (a) JAG Manual, section 2420

1. In compliance with reference (a), the following report of property damage claims in favor of the United States processed in the Second Naval District is submitted for the quarter ending on 31 March 1969:

a.	Total claims asserted	11
b.	Number of recoveries	5
c.	Dollar amount of asserted claim	$1,583.17
d.	Dollar amount of recoveries	$1,001.15
e.	Total amount of active claims on file end of quarter	5

A. F. Lawler
A. F. LAWLER
By direction

APPENDIX SECTION – 25

NOTARIAL FORMATS (See Chapter XXV)

The following contains formats for acknowledgments and for sworn instruments as well as general instructions for their accomplishment. These formats are legally sufficient in most jurisdictions, and by following the special instructions which are listed alphabetically in section 2510 by jurisdiction, they can be made legally sufficient in any specific jurisdiction. Although these formats may contain more facts than are required under the laws of a particular jurisdiction, the surplusage does not affect the validity of the acknowledgment.

SUGGESTED FORMAT FOR SIGNATURE BLOCK, WITNESSES, AND ACKNOWLEDGMENT CERTIFICATE

WITNESS the following signature and seal this__________day of__________, 19____.

(Signature of person whose
acknowledgment is to be taken) (SEAL)

Signed, sealed, and delivered in
the presence of:

(Signature of Witness)
(Name, Grade, Branch of Service, AFSN,
and Permanent Home Address)

(Signature of Witness)
(Name, Grade, Branch of Service, AFSN,
and Permanent Home Address)

(Signature of Witness)
(Name, Grade, Branch of Service, AFSN,
and Permanent Home Address)

With the United States Armed Forces
At (location*)

I,______________________________, the undersigned officer, do hereby certify that on this________day of __________, 19_____, before me, personally appeared (name of person whose signature is being acknowledged), (Armed Forces Service Number) whose home address is______________________________, and who is known to me to be (status**), and to be the identical person who is described in, whose name is subscribed to, and who signed and executed the foregoing instrument, and having first made known to him the contents thereof, he personally acknowledged to me that he signed and sealed the same, on the date it bears, as his true, free, and voluntary act and deed, for uses, purposes, and considerations therein set forth. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and same is executed in my capacity as (official capacity***).

(signature of officer)

(name of officer)

(AFSN, grade, and branch of service)

(command or organization)

(permanent home address)

*Insert Country, State, and County in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U. S. outside of the continental U. S."

**"U. S. Armed Forces member on active duty," or "the spouse of a U. S. Armed Force member," or "a person serving with the U. S. Armed Forces," or other appropriate description of status.

***"a commissioned officer under statutory authority granted to me" (State authority), or "Commanding Officer, U. S. Naval Station,__________________, under statutory authority granted to me" (State authority), or "a judge advocate under authority granted to me by Art. 136, UCMJ; 10 USC 936" (Federal authority), or "a lieutenant commander of the U. S. Navy on active duty under authority granted to me by Art. 136 UCMJ (10 USC 936) and the Manual of the Judge Advocate General, sections 2502 and 2503" (Federal authority).

SUGGESTED FORMAT FOR A SWORN INSTRUMENT

Venue

With the United States Armed Forces
At_______ (location*)___________

Body

(This part of the instrument contains the substance of the affidavit, deposition, or other sworn statement.)

Jurat

I,______________________________, the undersigned officer, do hereby certify that the foregoing instrument was subscribed and sworn to before me this______day of_________, 19_______, by (name of person making statement), (Armed Forces service number), whose permanent home address is______________________________, and who is known to me to be (Status**). And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United States Armed Forces, that by statute no seal is required on this certificate, and same is executed in my capacity as (official capacity***).

(signature of officer)

(name of officer)

(AFSN, grade, and branch of service)

(command or organization)

(permanent home address)

---

*Insert Country, State, and County in which instrument is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U. S. outside of the continental U. S."

**"U. S. Armed Forces member on active duty," or "the spouse of a U. S. Armed Force member," or "a person serving with the U. S. Armed Forces," or other appropriate description of status.

***"a commissioned officer under statutory authority granted to me" (State authority), or "Commanding Officer, U. S. Naval Station,________________, under statutory authority granted to me" (State authority), or "a judge advocate under authority granted to me by Art. 136, UCMJ; 10 USC 936" (Federal authority), or "a lieutenant commander of the U. S. Navy on active duty under authority granted to me by Art. 136 UCMJ (10 USC 936) and the Manual of the Judge Advocate General, sections 2502 and 2503" (Federal authority).

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